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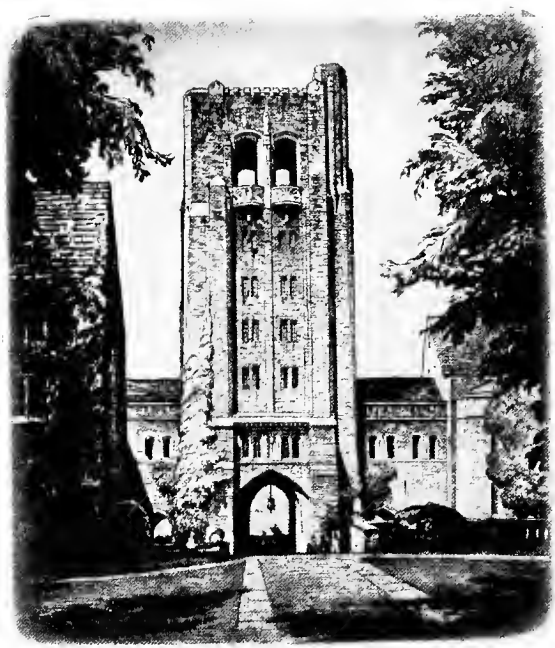

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DIGEST OF DECISIONS

OF THE

SECOND COMPTROLLER OF THE TREASURY,

VOL. II,

FROM 1869 TO 1884.

BY

W. W. UPTON,
SECOND COMPTROLLER.

COMPILED BY

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ERRATA.

On page 19, for 13 Opin., 83, read 13 Opin., 483.

In the reference to *Pay and Allowances*, under the subject LOYALTY—DISLOYALTY, on page 236, the number of the section should be 786 instead of 780.

TREASURY DEPARTMENT,
Document No. 659.
Second Comptroller.

PREFACE.

The effort made to set forth accurately the points decided in the Second Comptroller's Office during the last fifteen years, without repetition and in as condensed form as they are here presented, has required vastly more labor than would have been necessary to present the same matter less compactly, the work having involved an examination and comparison of opinions and decisions of the office, contained in many thousand official letters and indorsements in which many of the points have been repeatedly discussed and decided.

Being satisfied, from personal examination and revision, that the Digest, as prepared and now presented for publication, correctly presents these points, I take this occasion to express my grateful acknowledgments for assistance in preparing the work. I am under special obligation to Mr. Robert J. Mitchell for the thoroughness and accuracy of the compilation; and for valuable aid, not only in this compilation but in the preparation of the original decisions, I am under special obligations to Deputy Comptroller James S. Delano, and to Mr. Alfred Thomas, chief of the Miscellaneous Division, Mr. Jerome Lee, chief of the

Army Pay Division, Mr. J. D. Terrill, chief of the Indian Division, Mr. Benjamin Pike, chief of the Quartermaster's Division, Dr. W. G. Green, chief of the Pension Division, Maj. George H. French, acting chief of the Navy Division, and to others, experts in the office, whose experience and skill in the work assigned to them, respectively, have aided in the preparation of the work.

W. W. UPTON.

WASHINGTON, D. C., *December* 15, 1884.

All the decisions herein digested, of date prior to May 10, 1876, were rendered by the late Dr. John M. Brodhead;

Those of date from May 10, 1876, to October 1, 1877, by the Hon. C. C. Carpenter; and

Those of date subsequent to October 1, 1877, by W. W. Upton, the present Comptroller.

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DIGEST OF DECISIONS.

ABSENCE WITHOUT LEAVE.

SEE BOUNTY, 156–158; COURTS-MARTIAL, 374; DESERTERS, 419–420; INDIAN AGENTS, 619; PAY AND ALLOWANCES, 879.

ACCOUNTABILITY; LIABILITY; RESPONSIBILITY.

SEE, ALSO, ATTORNEYS, 74; BOUNTY, 174; CHARTER-PARTY, 238–239; CONTRACTS, 363; COURTS-MARTIAL, 378; DEPARTMENT PRACTICE, 386; DISBURSING OFFICERS, 424–425, 428, 443–444; FORGERY, 502; GENERAL AVERAGE, 549; INDIAN AFFAIRS, 576; INDIAN AGENTS, 621; PAYMASTERS, 961, 967, 970–971; PENSION AGENTS, 1015, 1017; PRIVATE PROPERTY, 1038; RAILROADS, 1050–1051.

1. When, in a settlement with the heirs of a deceased soldier, an opportunity to deduct the amount of an overpayment, made to the soldier by reason of an erroneous muster, has been afforded to the United States and no advantage taken thereof, it is too late to hold the mustering officer accountable for the overpayment.—*January* 20, 1881, Vol. 43, p. 518. (U.)

2. An officer who certifies to the accuracy of a company roll is chargeable with any loss that may result to the United States from overpayments due to error of fact in the certificate.—*March* 13, 1882, Vol. 45, p. 324 (U.); Army Regulations of 1863, paragraph 1006; Army Regulations of 1881, paragraph 1652.

ACCOUNTING OFFICERS.

See, also, Accounts, 12; Attorneys, 75, 77; Bounty, 135, 139; Claims, 253, 266, 283; Contracts, 343; Damages, 380–382; Department Practice, 402; Executors and Administrators, 487; Jurisdiction, 645, 648, 653, 656, 658–659, 664; Medical Attendance, 684; National Home for Disabled Volunteer Soldiers, 721; Soldiers' Home, 1115; State Claims, 1120–1121; Transportation, 1149.

3. The accounting officers are placed between creditors of the Government and the Treasury, to do justice to both according to law. If a creditor has been short paid or erroneously debited it is the duty of the accounting officers, on discovery of the error, to redress the wrong and pay the proper amount.—*January* 9, 1869, Vol. 32, pp. 43–44. (B.)

4. Each settlement made by the accounting officers is a ruling on the points involved in the account, whether or not a letter is written giving reasons for the decision.—*November* 6, 1880, Vol. 43, p. 315. (U.)

5. It is the duty of the accounting officers to decide upon the validity and legality of powers of attorney, transfers and assignment of claims.—*October* 5, 1861, Vol. 23, p. 261; *March* 9, 1876, Vol. 37, pp. 522–523. (B.)

6. It is not the duty of the accounting officers to examine claims which are not presented to them for decision, merely for the purpose of expressing an opinion as to their regularity.—*October* 2, 1879, Vol. 42, p. 45. (U.)

7. The accounting officers, in settling accounts under a given law, may properly consider the report of a committee of Congress relating to the bill, in order to determine the principles which are to govern them in the examination and settlement of the accounts.—*December* 27, 1870, Vol. 33, p. 413; *January* 17, 1874, Vol. 35, pp. 571–572 (B.); 1 Opin., 597; section 42 of Digest of 1869.

8. Where a railroad company deemed the rates per mile allowed by the Quartermaster-General for transportation of soldiers insufficient, and proposed a settlement in the nature of an accord and satisfaction, upon the basis of four cents per mile: *Held*, that there is no law, or regulation founded upon law, authorizing the accounting officers of the Treasury to act as arbitrators or referees: *Held, further*, that the establishment of transportation rates by the War Department was a matter peculiarly within its knowledge and experience, and that the accounting officers would not interfere with or modify the rates established by order of the Secretary of War.—*October* 17, 1870, Vol. 33, pp. 306–307. (B.)

9. A colored soldier having died in the service, his widow who resided in a State (Kentucky) in which slavery existed in 1860, prosecuted a claim before the Treasury Department, by attorney, for the amount due by reason of the services of the soldier. The claim was allowed, and a Treasury certificate issued, payable to the then Commissioner of the Freedmen's

Bureau. The sum therein named was paid to the Commissioner, who, out of the same, paid the attorneys' fees and expenses; but, although a receipt was obtained from the widow and filed in the Treasury by the Commissioner, the balance of the sum was never, in fact, paid to the widow, but probably was converted by some person or persons connected with the Bureau to his or their own use. The case was brought by the Second Auditor to the attention of the Department of Justice, and an indictment was found against an agent of the Bureau, in Kentucky, who was tried but not convicted. A charge for the amount of the balance was then raised against the Commissioner, upon the ground that he was responsible for moneys wrongfully appropriated by his subordinates, and suit was instituted against him, but judgment was rendered in his favor: *Held*, that so far as the accounting officers were concerned, the requirements of the joint resolution of March 29, 1867, (15 Stat., 26,) were strictly complied with; that the whole duty of the accounting officers in the premises was discharged when payment was made to the Commissioner, and that they were without authority to resettle any such case except when it appeared that the money had been by some means recovered and returned to the Treasury.*—*May* 18, 1880, Vol. 42, pp. 636–637; *April* 12, 1882, Vol. 45, p. 441. (U.)

10. Where the claim-papers contained nothing tending to show that the Auditor had finally acted upon the case, except a press copy of a letter to the attorney announcing "disallowance" of the claim: *Held*,

*For the law now regulating the settlement of claims for pay, bounty, &c., due to colored soldiers, sailors, or marines, or their legal representatives, see section 2 of the sundry civil appropriation act of March 3, 1879. (20 Stat., 402.)

that the claim was not presented to the Comptroller in such a way as to give him jurisdiction, and that the action of the Auditor should be certified to the Comptroller under the Auditor's official signature: *Held, further*, that whenever a claim is finally acted upon by the Auditor, whether his action be favorable or adverse to its allowance, the claim should be transmitted, with the vouchers and the Auditor's certificate, to the Comptroller for decision, as required by section 277, Rev. Stat.—*December* 10, 1881, Vol. 45, pp. 1–3. (U.)

11. The functions of the accounting officers are confined to questions arising on accounts, and it is not their duty to decide what contracts may or may not lawfully be entered into by officers of the War Department.—*March* 21, 1884, Vol. 48, p. 515. (U.)

ACCOUNTS.

See, also, Accounting Officers, 7; Claims, 270, 282; Comptroller, 303–305; Department Practice, 384, 388, 392–394, 402, 406; Disbursing Officers, 432, 436–438; Evidence, 469; Executors and Administrators, 490; Funeral Expenses, 547; Indian Agents, 605, 607, 609, 612, 625; Jurisdiction, 648–649, 662; Quartermasters, 1045–1046; Soldiers' Home, 1115.

12. The word "accounts," as used in sections 276–277, Rev. Stat., includes not only cases where the claimants have an open or running account with the Government, but also what are usually called claims and debts; in fact, all the pecuniary obligations of the Government; and the word "balance" means the sum or amount found to be due to or from the United States. Any account which section 277 requires an Auditor to receive or examine is required by the same

section to be transmitted to the Comptroller. The necessity for so transmitting the account does not depend on the nature of the certificate that the Auditor may make, but on the subject to which the account relates. If the matter is so before the Auditor that he can officially act on its merits, the intent of the statute is clear that he must transmit it to the Comptroller; and the direction is not that he transmit the balance if he finds a balance, but he is to transmit "such accounts, with the vouchers and certificate."—*March* 8, 1878, Vol. 40, pp. 31–38 (U.); 15 Opin, 139–146.

13. If the condition of an officer's property accounts leads to a suspicion that he is indebted to the Government, payment of a balance that has been certified in his favor by the accounting officers may be delayed until the question of indebtedness can be determined, and, if necessary, a new balance certified.—*August* 17, 1880, Vol. 43, p. 158. (U.)

14. In the settlement of a general account for purchases under a contract, where deliveries have been made at divers times under the same contract, so long as any of the items remain suspended or unsettled, the whole account may be re-examined without a direction for reopening.—*August* 9, 1879, Book 9 (Indian Division), p. 372. (U.)

15. When such an account (section 14, *ante*) has been examined and fully settled, and the balance due on the entire account certified by the accounting officers, it is not open for restatement, or for the certifying of a new balance arising out of the same contract.—*June* 21, 1881, Vol. 44, p. 222. (U.)

16. If an officer's property accounts are in such condition as to raise a money charge against him, such charge, when raised, becomes an item in his account,

which must be settled by the Auditor and Comptroller.—*August* 17, 1880, Vol. 43, p. 158 (U.); Rev. Stat., secs. 236, 237, 273; 13 Opin., 483.

ACKNOWLEDGMENTS.

See Bonds, 97; Oaths and Affidavits, 726.

ADJUTANT.

17. The approval of a superior officer is not essential to the validity of an appointment to the grade of adjutant, properly made by the regimental commander.—*September* 6, 1878, Vol. 40, p. 468. (U.)

ADMINISTRATORS.

See Executors and Administrators.

ADVERTISEMENTS; ADVERTISING.

See, also, Appropriations, 25; Contracts, 342, 353, 356, 366; Disbursing Officers, 432; Indian Affairs, 582; Public Exigency, 1043.

18. The written authority for the publication of advertisements, &c., under section 3828, Rev. Stat.,

must precede such publication. No subsequent approval or authorization can legalize advertising done without such written authority, so as to warrant payment for the same.—*December* 11, 1876, Vol. 38, pp. 426–427. (C.)

AFFIDAVITS.

See Oaths and Affidavits.

AGENCY; AGENTS.

See, also, Claims, 286; Contracts, 347; Department Practice, 402; Quartermasters, 1046.

19. The agency of a military pilot possessed of honesty and skill is the same as that of a civil pilot.—*January* 23, 1869, Vol. 32, p. 45. (B.)

20. When one by his undisputed receipt acknowledges having received money from an agent and thereby accredits the agent with his principal, the receipt is not only *prima facie*, but conclusive evidence of payment.—*October* 14, 1875, Vol. 37, pp. 150–151 (B.); *January* 29, 1877, Vol. 38, pp. 512–513 (C.); 7 Opin., 40.

21. An agent of the State of Kentucky, appointed under the act of the State legislature of February 27, 1865, must be governed, as to the rate of charges for

prosecuting claims of soldiers or citizens of that State, by the provisions of the act. In the absence of a subsequent express agreement with the claimant, he must, at the termination of his agency, either turn over the claims to his successor in office or prosecute them under the terms of said act.—*February* 19, 1881, Vol. 43, p. 586. (U.)

22. Authority to an agent to execute for his principal a contract for the sale and delivery of wood during the year 1880, does not authorize the attorney to execute a contract for delivering wood during the year 1881. Hence, where C., who held such power and also a general power of attorney, executed, in the name of G., a contract under seal to deliver wood at New Orleans Depot and at Jackson Barracks for the fiscal year 1881: *Held*, that G was not bound thereby, either by reason of the general agency held by C., or by virtue of a power of attorney previously given to C. to contract in G's name for the delivery of wood at Jackson Barracks during the fiscal year 1880.—*February* 25, 1881, Vol. 43, pp. 602–603. (U.)

23. Subsequently (to wit, March 29, 1881,) G. executed to C. a new power of attorney, under seal, referring to the void contract, and authorizing C. to do all that he had previously attempted to do for him in the matter of the contract: *Held*, that this was a ratification of the void contract which was thus made valid and binding on G.: *Held, further*, however, that it did not validate the bond originally taken, and that if a bond was to be relied on, a new one referring to the ratification by G. should be given.—*May* 5, 1881, Vol. 44, p. 69. (U.)

ALLOWANCES.

See Pay and Allowances.

APOTHECARIES.

See Rations, 1073.

APPROPRIATIONS.

See, also, Claims, 266, 269, 271; Compensation, 298; Construction of Statutes, 310-311, 314-316; Contracts, 321, 336-337; Department Practice, 385, 396; Disbursing Officers, 445; Indian Affairs, 572; Mileage, 698; National Home for Disabled Volunteer Soldiers, 720; Ordnance and Ordnance Stores, 732; Public Buildings, 1041; Rations, 1074; Soldiers' Home, 1114.

24. The cost of purchasing and repairing instruments may legally be charged to the appropriation for the respective engineering works to which the instruments appertain.—*March* 25, 1869, Vol. 32, p. 136. (B.)

25. Where a contract for performing certain work and furnishing certain materials was not executed until after the beginning of a given fiscal year: *Held*, that payment for the work and materials could not lawfully be made out of the appropriation of the previous fiscal year, notwithstanding the advertisement for sealed proposals had been made during such previous year.—*August* 27, 1870, Vol. 33, pp. 237–238. (B.)

26. The restrictions contained in sections 5, 6, and 7 of the appropriation act of July 12, 1870, (16 Stat., 251,) apply only to annual appropriations or to appropriations for a particular year, and do not affect permanent provisions which run indefinitely as to time; such as the provisions of the act of April 23, 1808, (2 Stat., 490,) for "arming and equipping the militia." Any balance standing on the books of the Treasury to the credit of that permanent appropriation is applicable to the manufacture and purchase of arms and other ordnance stores, and is subject to the requisition of the Secretary of War.—*November* 3, 1870, Vol. 33, p. 327. (B.)

27. Funds received from sales of quartermaster's stores prior to the appropriation act of July 12, 1870, (16 Stat., 251, sections 5 to 7,) as well as all balances of appropriations, were, upon the passage of that act, merged; and in regard to them the said act was prospective only, so that balances existing at the beginning of the fiscal year 1870 were applicable to the payment of expenditures occurring in the several previous years.—*January* 27, 1871, Vol. 33, pp. 468–469. (B.)

28. The deficiency bill of March 3, 1871, (16 Stat., 519,) appropriated $25,000 for certain enumerated purposes. This amount was credited by warrant of the Secretary of the Treasury under the general head of "Contingencies of the Army prior to July 1, 1870:" *Held*, that disbursements for contingencies of the Army which were for other objects than those specified, might be allowed as proper charges against this appropriation.—*April* 4, 1871, Vol. 33, pp. 562–564. (B.)

29. Section 3 of the civil appropriation act of July 12, 1870, (16 Stat., 250,) which prohibits payment

from the contingent fund for "official and clerical compensation," applies only to the civil contingent fund of the several Departments and Bureaus, and does not forbid payment, from "contingencies of the Army," for such services, clerical or otherwise, as are necessary incidents to the discipline and maintenance of the Army.—*March* 30, 1874, Vol. 35, pp. 679–680 (B.); 3 Opin., 88.

30. Moneys received for damaged, lost, or destroyed goods must be covered into the appropriation from which the funds to purchase them were derived, and as of the fiscal year during which the expenditure was made. If the date of original purchase does not appear, such amounts should be covered in to the credit of the fiscal year during which the collection was made or the amount recovered.—*December* 3, 1874, Vol. 36, pp. 334–335. (B.)

31. *Semble*, that when money is erroneously covered in to the credit of an appropriation subject to draft, it may be drawn out to correct the error; but if covered in to the credit of "miscellaneous receipts," under the act of March 3, 1847, (section 3618, Rev. Stat.,) it cannot be drawn from the Treasury without authority of Congress.—*December* 29, 1874, Vol. 36, pp. 382–383. (B.)

32. Under the clause in the sundry civil appropriation act of March 3, 1875, (18 Stat., 388,) providing for the sale of useless ordnance material, the net proceeds only of such sales are available. The necessary expenses of sale are to be deducted, and the balance only turned into the Treasury. Said net proceeds constitute a permanent appropriation of $75,000 a year, if the sales reach that amount, and become

indefinitely available in the future without appropriation.—*March* 15, 1875, Vol. 36, p. 491. (B.)

33. A claim for reimbursement of expenses incurred by a United States marshal in serving search warrants upon persons charged with harboring deserters from the Army cannot be paid from the appropriation for "Incidental expenses of the Quartermaster's Department of the Army." Such services are rendered in compliance with the provisions of section 5455, Rev. Stat., and are chargeable to the proper appropriations for the support of the civil service of the Government.—*January* 22, 1877, Vol. 38, pp. 497–498. (C.)

34. Where a specified sum, which is made up of several items from a list of claims certified by the accounting officers to be due and payable from one and the same appropriation, has been transmitted to the Secretary of the Treasury and by him reported to Congress, either for reappropriation from the unexpended balance theretofore carried to the surplus fund, or for appropriation immediately from the Treasury as a deficiency, the appropriation or reappropriation made in pursuance of such report is specific in its character, and cannot be used by the Executive Department of the Government except in payment of the claims embraced in the aforesaid list—*April* 28, 1877, Vol. 39, pp. 26–28. (C.)

35. Congress appropriated money to pay certain war claims, to be paid out on requisition of the Secretary of War. A balance of such appropriation was unexpended and carried to the surplus fund. Congress reappropriated the same for the same purpose: *Held*, that such reappropriation did not change the character of the same; that it was a War Department

appropriation, as before.—*May* 11, 1877, Vol. 39, pp. 56–57. (C.)

36. Where money is due for labor performed or materials furnished, and an account therefor is duly audited and certified by the accounting officers before the time arrives for covering into the Treasury the unexpended balance of the appropriation out of which the claim is payable, the amount so certified may be paid after that time, and it should not be included in the balance carried to the surplus fund.—*June* 15, 1878, Vol. 40, pp. 276–277. (U.)

37. Where Congress passed a relief act (20 Stat., 572,) authorizing and directing the Secretary of War to pay to a late assistant surgeon "such additional sum as will make his entire compensation equal to that of an assistant surgeon during the period of his active service in that capacity, and of his imprisonment in rebel prisons as a prisoner of war, estimating such period from the date of his commission as such surgeon": *Held*, that Congress must be deemed to have *determined the amount*, inasmuch as that must be regarded as certain which can be rendered certain by mere computation; and hence that if, at the date of the act, a particular appropriation was available, so much thereof as was needed to pay this ascertained debt for past services continued subject to requisition notwithstanding the time for covering in the unexpended balance thereof may have passed.—*September* 10, 1878, Vol. 40, pp. 478–479. (U.)

38. A public or private act may appropriate a specific amount for the payment of the expenses of a particular individual without authorizing the payment of more than has been actually expended; and when the act does not expressly order, require, or

permit payment of the sum named, it may be read by the light of surrounding circumstances, to ascertain whether that intent can be inferred from the language employed. In that class of cases in which there has been, prior to the appropriation, an examination and decision as to the amount to be paid, and in which such decision was evidently a matter regarded by Congress, it has been considered that the act of appropriation legalized or gave force to the decision; but where the amount of expenditure is wholly at large and no previous attempt has been made to pass upon the amount, the mere fact that Congress names the individual to be paid and specifies the amount appropriated for his payment does not bring the case within the class above mentioned nor amount to an auditing of the account. It has no other effect than to appropriate and to fix a maximum limit.—*September* 26, 1878, Vol. 40, pp. 521–523. (U.)

39. The expense of transportation of the remains of one who was killed in the performance of duty while engaged upon the work of "Improving the Missouri River above mouth of Yellowstone," if administratively decided by the officer having supervision of the work to be an expense incident to the execution thereof, would be properly payable out of the funds pertaining to the work. The same rule would apply in other similar cases; but each case of this kind must be more or less dependent on its peculiar circumstances.—*December* 7, 1878, Vol. 40, pp. 664–665. (U.)

40. Appropriations for river and harbor improvements are not appropriations made for a particular fiscal year within the meaning of section 3679, Rev. Stat.— *December* 2, 1879, Vol. 42, p. 151. (U.)

41. The use of the appropriation for "Fulfilling Treaty with Crows, 1880," for payment of travelling expenses of a delegation of said Indians visiting Washington, is not warranted.—*June* 15, 1880, Vol. 43, p. 6. (U.)

42. Unexpended balances of the appropriations for sundry civil expenses, made by the act of March 3, 1879, (20 Stat., 377,) cannot be applied to meet expenses incurred after June 30, 1880, without a violation of section 3690, Rev. Stat.—*July* 12, 1880, Vol. 43, p. 56. (U.)

43. The item "for developing and maintenance of water power, fifty thousand dollars," in the sundry civil act of June 16, 1880, (21 Stat., 267,) is not embraced in any of the appropriations excepted in the proviso to section five of the act of June 20, 1874, (18 Stat., 110,) and the sum appropriated can only be applied to the payment of expenses properly incurred during the year, pursuant to section 3690, Rev. Stat.—*August* 25, 1880, Vol. 43, p. 175. (U.)

44. Expenses incurred for meals and lodging by a sergeant while travelling under orders with military convicts is not a proper charge against the appropriation for "Expenses of military convicts, 1880."—*September* 14, 1880, Vol. 43, pp. 227–228. (U.)

45. The item, "For the completion of main building and one wing for new hospital for cadets, ten thousand dollars," and the item "For addition to cadet barracks, twenty thousand dollars," in the appropriation act of June 1, 1880, (21 Stat., 157,) are appropriations for "public buildings," and will remain available after the close of the fiscal year ending June 30, 1881.—Vol. 43, pp. 600–601, *February* 24, 1881. (U.)

46. Borrowing from one appropriation for the benefit of another, or making expenditures in excess of available appropriations, is prohibited by law. Expenditures in excess of the amount standing to the credit of agents and others, under the particular appropriation to which the expense is chargeable, will be disallowed.—*April* 13, 1881, Vol. 44, p. 9 (U.); paragraph 3 of Office Circular of May 28, 1875.

47. The river and harbor appropriation act of June 14, 1880, (21 Stat., 190,) contains an item as follows: "Improving Yadkin River, North Carolina, twenty thousand dollars, six thousand dollars of which may be expended for the removal of dams": *Held*, that no part of this twenty thousand dollars could lawfully be used "for compensation for damages and loss sustained by owners of dams."—*July* 19, 1882, Vol. 46, pp. 62–64. (U.)

48. Where estimates of appropriations were made and sent to Congress for specific items of expenditure in the Marine Corps under the head of "Contingencies," and Congress refused to make, or did not in fact make, such specific appropriation for such specified purposes as estimated for, but did make an appropriation of twenty-five thousand dollars for contingencies of the Marine Corps, (22 Stat., 295,) and expressly enumerated several purposes of expenditure, adding the words "and for other purposes," it would not be proper or lawful to use any portion of the amount so appropriated for any of the particular purposes estimated for which are not included among the items of expenditure for contingencies expressly enumerated in the appropriation act. So far as the items of expenditure asked for in the estimates are, by fair and reasonable construction, embraced in any of the items

enumerated in the act, the appropriation may be used for such purposes, but no further. The fourth section of the act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1883, (22 Stat., 255,) would preclude the use of any portion of this contingent fund, for the payment of any laborer after the first of October, 1882, even if there were no other objections.—*August* 19, 1882, Vol. 46, pp. 199–200. (U.)

49. The per-diem allowance of quartermaster's agents employed under the act of July 4, 1864, (sections 300 A. and 300 B., Rev. Stats.,) was fixed by paragraph 1427 of the Army Regulations of 1863 at four dollars, and so continued until, by the legislative, executive, and judicial appropriation act for the fiscal year ending June 30, 1883, it was reduced to a sum not exceeding three dollars from and after the approval of that act, (August 5, 1882.) An agent's per diem allowance that accrued prior to August 5, 1882, must be determined, as to its amount, by paragraph 1427 aforesaid, and not by the new appropriation act. This allowance is, however, virtually payable out of the new appropriation; although any funds that were in the hands of the Quartermaster's Department on July 5, 1882, and are still unexpended, may be used for the purpose. The joint resolution of June 30, 1882, (22 Stat., 384–385,)—the provisions of which were by joint resolution No. 70, (22 Stat., 392,) extended to August 5, 1882—was intended to do, and did do, double duty. It made available, for the necessary operations of the Government, any and all balances, remaining on hand, of the appropriations for the fiscal year ending June 30, 1882, and it made a sufficient

temporary appropriation in all cases where no such balance existed. But, inasmuch as it was solely by virtue of this joint resolution that any balances of last year's appropriations were made thus available for the payment of such accounts as the one under consideration, it is clear that while funds in the hands of the Quartermaster's Department may be made use of, whatever sum is expended therefrom must be charged to, and deducted from, the appropriation "for like service" for the fiscal year ending June 30, 1883, (22 Stat., 239.)—*August* 25, 1883, Vol. 46, pp. 211–212. (U.)

50. The "lapsing" or "covering in to the surplus fund" of any unexpended balance does not stand in the way of making the necessary transfers to correct the misapplication of funds; such transfers of unexpended balances are made under authority of the act of March 31, 1875, (18 Stat., 418, sec. 5.)—*March* 21, 1883, Vol. 47, pp. 127–128. (U.)

51. Where a disbursing officer draws money from the Treasury under one head of appropriation and expends it under another, if the expenditure be right in itself and correct otherwise than in the appropriation, the proper transfer requisition will issue, in the settlement of his account, to take the money from the proper appropriation and carry it to the credit of the appropriation from which it was erroneously disbursed. (See section 80 of Digest of 1869.)—*March* 21, 1883, Vol. 47, pp. 127–128. (U.)

52. The "river and harbor" act of March 3, 1881, appropriated, *inter alia*, for "Canal around Cascades of Columbia River, Oregon, one hundred thousand dollars," and further provided as follows: "Such parts of the money appropriated by this act for any particu-

lar improvement requiring locks and dams as may be necessary in the prosecution of such improvement, may be expended in the purchase, voluntary or by condemnation, as the case may be, of necessary sites," (21 Stat., 479 and 482.) The "river and harbor" act of August 2, 1882, (22 Stat., 205,) appropriated for "Constructing canal around Cascades of Columbia River, Oregon: continuing construction, two hundred and sixty-five thousand dollars": *Held*, that payment might be made out of the latter appropriation for additional land required for the proper construction of the canal.—*December* 4, 1883, Vol. 48, pp. 164–165. (U.)

53. By the act of April 11, 1882, (22 Stat., 42–43,) a part of the appropriation referred to in the second paragraph of the agreement there quoted may be expended, "in cash," for the benefit of the Crow Indians: *Held*, that if, in the discretion of the Secretary of the Interior, it be deemed most beneficial to these Indians to use this money in transportation of their children to Carlisle or some other locality, it will not be the duty of the accounting officers to question the propriety of that course.—*November* 1, 1883, Vol. 48, pp. 94–95. (U.)

54. The appropriation known as "Interest on the Osage Fund" cannot be used for the expenses of maintaining the Carlisle Indian school during the fiscal year ending June 30, 1881. The appropriation for the support of the Carlisle school, in the act of March 1, 1883, (22 Stat., 448,) operates as a limit upon the amount authorized to be expended for said school.—*March* 7, 1884, Vol. 48, p. 473. (U.)

55. Balances of appropriations for "Pay of the Navy" are not subject to be covered into the Treas-

ury under the provisions of section 5 of the act of June 20, 1874, (18 Stat., 110.)—*March* 10, 1884, Vol. 48, pp. 482–483. (U.)

56. The appropriation in aid of militia practice in heavy artillery drill, made by section 2 of the act of May 19, 1882, (22 Stat., 93,) is a permanent, annual, indefinite appropriation of five thousand dollars to each State described in the section that shall, in the discretion of the Secretary of War, become entitled thereto.—*March* 13, 1884, Vol. 48, pp. 492–493. (U.)

ARBITRATION.

See Accounting Officers, 8; Contracts, 338.

ARTIFICIAL LIMBS.

See Pensions, 994; Transportation, 1152, 1155.

57. The provisions of law for furnishing soldiers with artificial limbs, or money commutation therefor, are personal to the soldier himself, and in case of his death before receipt thereof the benefits do not extend to his heirs —*September* 20, 1870, Vol. 33, p. 261 (B.); *May* 1, 1883, Vol. 47, pp. 241–242. (U.)

58. A fee of one dollar and fifty cents will be allowed to the examining surgeon for one examination of each artificial limb furnished by the Government to disabled soldiers; such examination to be made after the completion of the limb and at the time of its adjustment.—*July* 17, 1871, Vol. 34, p. 90. (B.)

59. Commutation for an artificial limb being a claim entirely personal to the party who lost the limb is not payable after his death.—*December* 16, 1874, Vol. 36, pp. 351–352. (B.)

ASSESSMENTS.

60. Where in a written lease the Government stipulated to pay a certain annual rent and to "refund (to the lessor) all *taxes* paid" on the demised premises: *Held*, that there was no liability on the part of the Government to refund certain *assessments* for paving imposed upon the lot by the board of public works.—*April* 28, 1876, Vol. 37, pp. 656–660. (B.)

ASSIGNMENTS; TRANSFERS.

See, also, Accounting Officers, 5; Claims, 270; Contracts, 340–341; Deserters, 414; Disbursing Officers, 443; Partners, 737; Pay and Allowances, 746; Pension Agents, 1012; Powers of Attorney, 1030–1034; Receipts, 1079.

61. An assignment by an ex-officer of all arrears of pay due him from the United States, the officer being at the date of the assignment under a total stoppage of pay, is within the prohibition of the act of February 26, 1853, (section 3477, Rev. Stat.)—*January* 3, 1879, Vol. 41, pp. 26–28. (U.)

62. An assignment by indorsement, made prior to the act of February 26, 1853, (section 3477, Rev. Stat.,) by the payee named in a Treasury certificate,

is sufficient to pass title.—*September* 15, 1880, Vol. 43, p. 223. (U.)

63. An assignment of an Oregon war claim, if made before the United States assumed the indebtedness, is not within the prohibition of section 3477, Rev. Stat. —*November* 18, 1880, Vol. 43, pp. 349–350. (U.)

64. A check for ninety dollars, in payment of bounty, was mailed to the soldier's address April 4, 1881. The soldier having died on March 27, 1881, the check was returned by the local attorney, with sworn statements setting forth that the soldier, being indebted to a firm of druggists for medicine, &c., agreed that the check, when received, should be turned over to the said firm towards payment of the debt. The only writing evidencing assignment was a sight draft drawn by the soldier, November 3, 1880, on the local attorney in favor of the druggists for ninety dollars, "payable out of bounty certificate when received": *Held*, that the requirements of section 3477, Rev. Stat., not having been complied with, the assignment could not be recognized by the accounting officers, and that the check belonged to the soldier's estate, to be collected by his administrator.—*May* 7, 1881, Vol. 44, pp. 73–74. (U.)

ASSISTANT COMMISSARY.

65. An acting assistant commissary is entitled to the extra pay allowed by law, notwithstanding the period of his service was less than one month.—*January* 28, 1875, Vol. 36, p. 420. (B.)

66. The act of July 15, 1870, was so modified by the Revision of the Statutes as to entitle a captain performing duty as acting assistant commissary of subsistence to additional compensation therefor.—*June* 26, 1878, Vol. 40, pp. 304–308. (U.)

67. The Revised Statutes were approved June 22, 1874, and took effect on that date, from which time a captain, performing duty as acting assistant commissary, is entitled to the additional compensation allowed by section 1261, Rev. Stat.—*April* 3, 1879, Vol. 41, pp. 279–282. (U.)

68. Under section 1261, Rev. Stat., an officer of the quartermaster's or other staff department, performing duty as acting assistant commissary, is entitled to additional compensation.*—*August* 24, 1880, Vol. 43, p. 169. (U.)

69. Prior to June 22, 1874, only subalterns were entitled to additional compensation for performing duty as acting assistant commissaries.—*June* 26, 1878, Vol. 40, pp. 304–308; *March* 17 and *April* 3, 1879, Vol. 41, pp. 225–228, 279–282; *April* 15, 1881, Vol. 44, p. 12; *April* 21, 1882, Vol. 45, p. 500. (U.)

70. C. presented to the accounting officers a claim for services as acting assistant commissary of subsistence from January 20 to July 20, 1877. It appearing that he had previously prosecuted to judgment a claim against the United States in the Court of Claims for similar services rendered by him during certain periods ranging from August 1, 1875, to November 30, 1877, the doctrine of *res adjudicata* was applied and his claim disallowed.—*December* 24, 1879, Vol. 42, pp. 213–214. (U.)

* The compensation has been allowed to regimental quartermasters for like duty performed since July 15, 1870.—6 Otto, 232.

ASSISTANT SURGEONS.

SEE APPROPRIATIONS, 37; MILEAGE, 693, 699; PAY AND ALLOWANCES, 753, 787, 815, 834, 900, 909, 941; STATE CLAIMS, 1118; TRAVELING EXPENSES, 1169, 1185.

ATTACHMENT.

71. No attachment or garnishment in respect of any indebtedness due to a creditor of the United States can be recognized as binding upon the Government.—*May* 4, 1870, Vol. 33, pp. 114–115 (B.); Buchanan *v.* Alexander, 4 Howard, 20.

ATTORNEYS.*

SEE, ALSO, ACCOUNTING OFFICERS, 5; AGENTS, 22–23; CHECKS, 245–246; CLAIMS, 271; CONTRACTS, 340; FORGERY, 500; INDIAN AGENTS, 615; JURISDICTION, 647; PENSIONS, 1002; SOLDIERS' DISCHARGES, 1110; STOPPAGES, 1123.

72. An attorney debarred from practice by a competent court for fraud, dishonesty, and misconduct, cannot be recognized as an agent or attorney to prosecute claims against the Government.—*July* 16, 1869, Vol. 32, p. 357; *August* 26, 1869, *ibid.*, pp. 422–426. (B.)

73. Where letters of attorney are given to a firm, with power of substitution, and the firm is subse-

*For a general consideration of the rights, powers, and duties of attorneys and claim-agents, with copious references to authorities, see Vol. 34, pages 470–478, *May* 14, 1872. (B.)

quently dissolved, the right of substitution does not survive to the partner or partners continuing the firm business whether as successors, surviving partners, or otherwise.—*August* 3, 1869, Vol. 32, pp. 389–391. (B.)

74. The dissolution of a firm of attorneys does not relieve either member of the firm from his obligation to prosecute a claim, nor does the death of one member exonerate the survivor from his obligation to prosecute; nor, when such survivor has prosecuted a claim successfully, is the claimant relieved from his obligations.—*May* 14, 1872, Vol. 34, pp. 474–475. (B.)

75. Where an order of the United States district court for the southern district of Illinois directed that all prize money or salvage due or to become due to the officers and crews, or their heirs, of the "Mississippi squadron," under any decree of said court, be paid to an attorney other than the one whom the officers and seamen, or their legal representatives, had designated or appointed, and whom the accounting officers had duly recognized: *Held*, that such order was not binding on the accounting officers.—*July* 21, 1869, Vol. 32, pp. 366–367. (B.)

76. In a litigation between two attorneys who held powers of attorney authorizing them jointly to prosecute divers claims against the Government, the court appointed a receiver, with power to collect, receive, and hold, subject to the order of the court, all fees due or to become due to the two litigants: *Held*, that the claimants who had executed the powers of attorney, not being parties to the litigation, the order of the court would not justify the Treasury Department in placing the drafts in the hands of the receiver.—*April* 2, 1884; claim of Lieut. C. T. Bly, certificate No. 23,245. (U.)

77. Powers of attorney executed before the issuing of the warrant are ineffectual for the purpose of enabling an attorney to receive money awarded on a claim, but their validity in other respects is unquestionable; and the policy pursued by the accounting officers of ignoring revocations of powers unless because of improper conduct or neglect on the part of the attorney, is a judicious one.—*May* 14, 1872, Vol. 34, pp. 474–475 (B.); *January* 4 and 30, 1882, Vol. 45, pp. 74, 180; and see Vol. 45, pp. 547–554, *May* 22, 1883. (U.)

78. One Fisher was killed by the bursting of a shell on July 1, 1864, and in June, 1866, a claim was made for prize money under a power of attorney to prosecute the claim, executed to one Torrey by a person who simulated the deceased, but whose identity as the genuine Fisher was affirmed by several of the latter's shipmates, and also by an assistant paymaster of the Navy, whereupon the claim was allowed and the prize money paid to Torrey, as attorney, and by him to the fictitious Fisher: *Held*, that as the claim and the power of attorney of the false Fisher were made two years after the death of the genuine Fisher had been reported to the Department, the Government was in fault in issuing the Treasury certificate upon which payment was made, and that its failure to refer to the rolls, which were accessible and which would have revealed the fraud, exonerated the attorney (who had acted neither in bad faith nor with lack of precaution) from liability to refund the amount paid.—*March* 4, 1870, Vol. 33, pp. 31–32 (B.)

79. A letter addressed to the Quartermaster-General requesting him "to settle my claim against the Government with B.; he is the only one I have au-

thorized to receive it," is not a power of attorney to B. or a revocation of a power originally given to P.—*February* 19, 1881, Vol. 43, pp. 584–587. (U.)

80. An attorney will be deemed to have abandoned a case where the claim papers indicate no action on his part for six years, unless the claimant shall, in some direct manner, expressly recognize him after such period. Inaction for a lesser period, if unreasonable, will raise the same presumption.—*August* 25, 1880, Vol. 43, p. 196.

Modified, February, 1881; attorney to be given an opportunity to show cause why this rule should not be enforced against him. Vol. 43, p. 584. (U.)

81. In claims for quartermaster's stores under the act of July 4, 1864, it is the settled rule of this office that if the claimant's attorney fails to appear to conduct the investigation before the quartermaster's agent, the claimant is at liberty to take charge of the case in person or to employ another attorney. In such event, unless the attorney theretofore employed shall show reasonable cause for his failure to appear and take charge of the investigation, he will be deemed to have abandoned the case.—*January* 30, 1884, Vol. 48, pp. 342–350. (U.)

82. It is contrary to the practice to permit a claimant to revoke his attorney's power and to dismiss the attorney without payment, after the case is completed, except for good cause shown.—*September* 22, 1882, Vol. 46, pp. 270–271. (U.)

83. No objection appears to the allowance of fees to a suspended attorney in cases which come within the rule recognizing an attorney's right thereto, if the evidence necessary to perfect a claim had been filed prior to the date of the attorney's suspension.—*De-*

cember 13, 1877, Vol. 39, p. 526; *April* 2, 1881, and *April* 4 and 30, 1883, Vol. 47, pp. 143–145, 159–161, 237. (U.)

84. Under a general claim for arrears of pay and bounty, it was found that the soldier was entitled to one hundred dollars bounty under the act of July 22, 1861, and also to one hundred dollars under the act of July 28, 1866: *Held*, that the case fell within the provisions of the joint resolution of July 26, 1866, (14 Stat., 368,) and that the attorney by whom the claim was filed was entitled to a fee of ten dollars, and no more.*—*September* 15, 1879, Vol. 42, pp. 12–13. See, also, Vol. 47, pp. 364–365, *June* 13, 1883. (U.)

85. Where, under a divisible contract with his Indian clients, an attorney has performed a portion of the stipulated services, he may be entitled, pursuant to section 2104, Rev. Stats., to be paid in proportion to the services rendered.—*July* 13, 1880, Vol. 43, pp. 59–64. (U.)

86. An attorney, under a contract with the Osage Indians faithfully to render certain professional services, "for a period of three years from its date," for a certain percentage of each amount of money to be recovered, does not guarantee success, or that the benefit of his services shall accrue to his client within the three years; and a balance may be stated in his favor by the accounting officers, at any time, for the percentage as fixed by the contract, on whatever amount of money is from time to time actually recovered in

* The rates of fees prescribed by the joint resolution of July 26, 1866, are as follows: For all sums not exceeding fifty dollars, a fee of five dollars; for all sums exceeding fifty dollars and less than one hundred dollars, a fee of seven dollars and fifty cents; and for all sums exceeding one hundred dollars, a fee of ten dollars; and it is provided that said fees shall include all expenses incident to the collection of the claims except the expense of notarial and other acknowledgments.

consequence of the services rendered.—*July* 13, 1880, Vol. 43, pp. 59–64. (U.)

87. In such a case, the contract being divisible, the attorney may claim as much as he chooses and upon whatever ground he may deem advisable; it will then be for the accounting officers to judge whether there are grounds upon which he is entitled to any allowance, and what balance, if any, is due him.—*July* 13, 1880, Vol. 43, p. 59. (U.)

88. In the absence of a special agreement, a charge of fifty per cent. of the amount of the allowance is an unconscionable one, even though the fee was contingent.—*February* 19, 1881, Vol. 43, p. 586; *July* 17, *August* 18, and *September* 14, 1882, Vol. 46, pp. 53–54, 197–198, 249. (U.)

89. Where a claimant contracts with his attorney that the latter shall prosecute his claim to a final determination, and receive for his services a fee equal to a certain per centum of the amount that shall be recovered, the contract is an entirety, and it is an essential feature thereof that the attorney is irrevocably bound to prosecute the claim to final issue, and that the claimant shall permit him to do so. The claimant cannot, by any subsequent act of his, alter the terms or duration or binding obligation of the contract. If, at the time of executing the contract, the claimant executes a power of attorney to prosecute the claim to a final determination, the contract and the power are to be read together as one instrument, and will have the same construction and effect as though both were written on the same paper.—*May* 3, 1881, Vol. 44, pp. 55–59; *June* 21, 1883, Vol. 47, pp. 395–398. (U.)

90. The legal representative of a deceased claimant, whose claim has been faithfully prosecuted by an

attorney, will not be permitted to revoke the power of attorney given during the decedent's life-time, for the purpose of depriving the attorney of his compensation.—*June* 21, 1883, Vol. 47, pp. 395–398. (U.)

91. The privilege granted an attorney of having the care of a draft to enable him to secure compensation for his services is not a legal right which the law vests in him, but a comity or a favor conferred by the Department in the interests of justice and fair dealing.—*May* 3, 1881, Vol. 44, p. 59. (U.)

92. An employé of the Government is not precluded by law or Department regulations from receiving compensation as attorney in a claim which had been completed prior to his entry into Government service.—*May* 23, 1881, Vol. 44, p. 131; *December* 20, 1881, Vol. 45, pp. 40–41. (U.)

93. Where no power of attorney appeared among the claim papers when they reached this office, but an attorney proved satisfactorily that he had received such a power and had constantly attended to the prosecution of the claim, and the records of the Quartermaster-General's office showed that the claim had originally been filed by said attorney, and did not show that any other attorney had ever appeared in the case, or that correspondence had ever been held directly with the claimant: *Held*, that the attorney should be recognized, and the draft sent in his care.—*June* 16, 1882, Vol. 45, pp. 645–646. (U.)

94. While a party ordinarily has a right to revoke a power of attorney at his pleasure, and to break his contract and leave the attorney to his remedy by an action for damages, yet when a case is pending in court or before the accounting officers, he cannot thus break his contract by dismissing the attorney in the

case, without the consent of the tribunal before which the case is pending; and such consent will not be given when the dismissal would be a violation of good faith.—*June* 21, 1883, Vol. 47, pp. 395–398; *July* 31, 1883, Vol. 47, pp. 497–498. (U.)

AUDITORS.

See Accounting Officers, 10; Accounts, 12; Comptroller, 303–304; Department Practice, 388–389, 401; Jurisdiction, 630.

BAGGAGE.

See Indian Agents, 624; Mileage, 686; Railroads, 1062; Transportation, 1160.

BILLS OF LADING.

See, also, Indian Agents, 613; Transportation, 1160.

95. A marginal note upon a bill of lading becomes a part of the contract when the master of the vessel signs the bill.—*January* 14, 1871, Vol. 33, p. 450. (B.)

BOARDS OF SURVEY.

See, also, Contracts, 338; Mileage, 688.

96. The report of a Board of Survey, or any statement of facts contained in a report made by gentlemen thus selected, or any opinion they are qualified to give as experts, is evidence entitled to respectful consideration, and if it is not contradicted by surrounding circumstances or by direct evidence, such report may be a safe guide to correct conclusions. It is not, however, to be regarded as a decision, to be affirmed or overruled; but as evidence, to be examined with all other evidence. Its weight as evidence must depend upon its efficiency in bringing conviction to the mind, and not upon any arbitrary force pertaining to it as a decision of a tribunal.—*July* 25, 1878, Vol. 40, pp. 384–387. (U.)

BONDS.

See, also, Agents, 23; Compromise, 299; Contracts, 348, 350; Disbursing Officers, 428; Executors and Administrators, 490; General Average, 551; Indian Affairs, 588; Indian Agents, 599, 604, 609, 626; Pensions, 1006; Sureties, 1125–1126.

97. Acknowledgment is not essential to the validity of a bond.—*January* 18, 1869, Vol. 32, p. 37. (B.)

98. A simple scroll is not a sufficient seal upon an indemnity bond; either wax or wafers should be used. The words "heirs, executors, administrators, and assigns" are essential.—*January* 13, *September* 6, and

December 21, 1869, Vol. 32, pp. 348, 434, 560–561; *March* 8, 1870, Vol. 33, p. 35 (B.); *September* 20, 1878, Vol. 40, p. 508. (U.)

99. The pecuniary ability of sureties in an indemnity bond should be certified to by a disinterested United States official.—*September* 1, 1869, Vol. 32, pp. 429–430. (B.)

100. Sureties on a bond must state their respective places of residence.—*January* 18 and *April* 21, 1871, Vol. 33, pp. 459, 584 (B.); U. S. Army Regulations of 1863, par. 990. (Par. 1627 of edition of 1881.)

101. As a rule, a bond of indemnity executed in a foreign country will not be regarded as sufficient.—*November* 4, 1874, Vol. 36, p. 272. (B.)

102. The oath of the sureties in T.'s bond was taken before T. himself, as United States Commissioner: *Held*, that this did not invalidate the bond.—*December* 27, 1876, Vol. 38, pp. 457–458. (C.)

103. The certificate to the justification of sureties by a clerk of the county court should be under his seal of office.—*September* 20, 1878, Vol. 40, p. 508. (U.)

104. The sureties on any given bond of an Indian agent may not be held for money placed in the agent's hands before they assumed responsibility for the transactions of their principal, if there is no evidence that the money remained in his hands at the date of their bond.—*November* 24, 1880, Vol. 43, p. 360. (U.)

105. Where a bonded officer is appointed for a limited term, the bond given by him runs for his term; if his term be indefinite, it runs during his continuance in office. A new bond given by him is merely cumulative, and does not release the sureties on the old one, unless a settlement under the old one has been made and all indebtedness paid and the new

bond accepted by authority of the head of the proper Department as a substitute for the previous one.—*November* 5, 1869, Vol. 32, p. 511 (B.); *June* 30, 1882, Vol. 45, pp. 696–697. (U.)

106. Where a bond of indemnity, given by a railroad company, is executed by the president of the company, evidence must accompany it, showing that he is specially authorized to bind the company by signing bonds.—*January* 12, 1870, Vol. 32, pp. 590–591. (B.)

107. The bond of indemnity required to be given before a duplicate check will be issued has no other effect than to secure the United States against double payment. It affords no protection to private individuals or bankers who may cash either the original check or the duplicate.—*December* 4, 1871, Vol. 34, p. 250. (B.)

108. The date of approval by the Secretary of War of a paymaster's bond is presumed to be the date of its delivery, and the date of delivery is substantially the date of the bond and the date on which the paymaster is entitled to enter upon the duties of his office.—*January* 15, 1878, Vol. 39, pp. 589–590; but see Vol. 39, p. 643, *February* 12, 1878. (U.)

109. As a general rule and in the absence of other proof of delivery, the date of the approval by the Secretary of the Interior of a pension agent's bond will be accepted as the date at which the bond was delivered and took effect.—*March* 30, 1878, Vol. 40, pp. 92–94. (U.)

110. A bond of a disbursing officer, on file in the Second Comptroller's Office, may not be surrendered, but must remain on file even after subsequent bonds

have been filed by such officer.—*August* 28 and *September* 30, 1880, Vol. 43, pp. 181–182, 195. (U.)

111. The following is the correct form of a bond to be given by a disbursing officer of the Pay Department; Vol. 44, p. 199. (U.):

Know all men by these presents: That we, ——— ———, ——— ———, are held and firmly bound unto the United States of America in the penal sum of ——— dollars, lawful money of the United States, to be paid to the said United States; to which payment, well and truly to be made, we bind ourselves and our heirs, executors and administrators, for and in the whole, jointly and severally, firmly by these presents. Signed with our hands and sealed with our seals this —— day of ———, in the year one thousand eight hundred and ———. The condition of this obligation is such that, whereas the above bounden ———— has been appointed ———— in the Army of the United States, and has accepted said office: Now, if the said ———— shall, in all respects, faithfully discharge all the duties of his said office according to law, and shall faithfully account to the said United States for all public moneys and property which he shall or may receive as such officer, and pay, refund, and return the same as required by law, then this obligation shall be void; otherwise to remain and be in full force and virtue.

Signed, sealed, and delivered in presence of—

[L. S.]
[L. S.]
[L. S.]

112. No provision having been made by law for cancelling or discharging official bonds to the Government, the uniform practice has been for the Government to retain the custody of such bonds, notwithstanding the office of the principal may have expired, and although his accounts may have been satisfactorily settled. (See section 138 of Digest of 1869).—*January* 29, 1878, Vol. 39, pp. 608–609. (U.)

113. The balance which an Indian agent has on hand at the expiration of one bond and at the time

he becomes liable on another should be charged against each set of bondsmen, unless it is determined, or is clearly determinable, which set of sureties is liable for the balance.—*June* 30, 1882, Vol. 45, pp. 696–697. (U.)

114. The mere admissions of an agent is not sufficient evidence to authorize the release of one set of bondsmen and the charging of another.—*April* 28, 1884, Vol. 48, pp. 649–650. (U.)

BOUNTY.

See, also, Assignments, 64; Attorneys, 84; Colored Soldiers, 294; Evidence, 468; Executors and Administrators, 478; Indian Affairs, 564–565; Loyalty, 675; National Home for Disabled Volunteer Soldiers, 717; Pay and Allowances, 835; Soldiers' Discharges, 1112; State Claims, 1119; Time, 1136.

115. A soldier who has previously served in the Navy and is entitled to prize money is not thereby precluded from his right to additional bounty.—*January* 23, 1869, Vol 32, p. 54. (B.)

116. Matured instalments of bounty that accrue to one who enlisted in the Navy under the act of July 1, 1864, (13 Stat., 342,) descend to his heirs.—*May* 27, 1869, Vol. 32, pp. 266–267. (B.)

117. Marines who enlisted for four years under the act of July 1, 1864, (13 Stat., 342,) became entitled to the third instalment of bounty upon the expiration of three years from the date of enlistment.—*May* 27, 1869, Vol. 32, pp. 266–267. (B.)

118 The clause in section 1 of the act of July 4, 1864, (13 Stat., 379,) which gives the residue of

bounty for the whole term of the soldier's enlistment to his widow or children or widowed mother, in case of his death while in service, has not been applied to sailors or marines.—*May* 27, 1869, Vol. 32, p. 267. See, also, Vol. 27, p. 394, *January* 16, 1865. (B.)

119. The men of Captain Bryson's company of mounted volunteers, of Cherokee County, N. C., are upon the footing of three-years volunteers, and those who served until May 15, 1865, are to be regarded as having been mustered out because their services were no longer required and as entitled to bounty accordingly. Most of them, having furnished their own clothing, should be allowed commutation therefor.—*March* 31, 1871, Vol. 33, pp. 554–555. (B.)

120. In adjudicating bounty claims under section 1 of the act of March 3, 1869, (15 Stat., 334,) as construed by the Attorney-General in his opinion of January 19, 1870, (13 Opin., 201,) soldiers who enlisted under the act of July 4, 1864, (13 Stat., 379,) if discharged by reason of expiration of service, are to be allowed the unpaid instalments of bounty, but are not entitled to the additional bounty granted by the act of July 28, 1866, (14 Stat., 322.)—*February* 9, 1870, Vol. 33, pp. 6–7. (B.)

121. When an enlistment was in reality made merely for the unexpired term of the organization into which the soldier entered, although nominally for three years, and the words "expiration of service," used in the discharge paper, actually have reference to the term of service of the regiment and not of the soldier himself, the discharge will be referred to the Adjutant-General of the Army for correction.—*February* 9, 18 0, Vol. 33, p. 7. (B.)

122. When applications are made for unpaid in-

stalments of bounty by soldiers who enlisted under the act of July 4, 1864, (13 Stat., 379,) if the unexpired time of enlistment is so great as to raise the presumption of error, their discharge papers should be referred to the Adjutant-General, to be either verified or corrected.—*February* 9, 1870, Vol. 33, p. 7. (B.)

123. A soldier, enlisted and mustered into service for three years under General Orders No. 28 of 1862, State of Massachusetts, is allowed one hundred dollars bounty under the act of July 22, 1861, (12 Stat., 270,) and fifty dollars bounty under the act of July 28, 1866, (14 Stat., 322,) upon the ground that he had substantially completed the term of two years. See papers in case of William M Lunt, private Company F, First Massachusetts Heavy Artillery.—*June* 3, 1870. (B.)

124. Enlisted men who enlisted under the President's proclamation of May 3, 1861, (12 Stat., 1260,) and were discharged for promotion before two years of service, are not entitled to the one hundred dollars bounty.—*April* 9, 1870, Vol. 33, pp. 87–88. (B.)

125. Medical cadets, whose enlistment was authorized by section 5 of the act of August 3, 1861, (12 Stat., 288,) are not entitled to bounty.—*April* 25, 1870, Vol. 33, pp. 103–104. (B.)

126. A soldier discharged because of loss of an eye from the effects of sun-stroke is not entitled to bounty under the provisions of the act of March 3, 1865, (13 Stat., 487,) or under the joint resolution of April 12, 1866, (14 Stat., 352.) Such an injury is not a "wound."—*October* 28, 1870, Vol. 33, p. 321 (B.); *March* 22, 1882, Vol. 45, pp. 354–355. (U.)

127. But injury by a stroke of lightning is held to be a wound. See case of J. R. Felker, private, Com-

pany K, Seventh New Hampshire Volunteers.—*July* 7, 1876. (C.)

128. Bounty, under section 6 of the act of July 22, 1861, (12 Stat., 270,) cannot be allowed to a soldier discharged by reason of disease, before having served two years.—*December* 1, 1870, Vol. 33, pp. 366–367 (B.); *February* 3, and *March* 13 and 31, 1882, Vol. 45, pp. 192, 322, 395–396; *August* 6, 1883, Vol. 47, pp. 530–531. (U.)

129. The time a soldier serves as a convict cannot be counted in making up the two years' service required by law to entitle an enlisted man to bounty under the act of July 22, 1861, (12 Stat., 270,) and where he is serving under an instalment bounty law, the instalments maturing during the period of his conviction are forfeited. As a general rule, instalments of bounty are determined by the time for which a soldier is legally paid.—*January* 18, 1871, Vol. 33, pp. 458–459. See, also, Vol. 34, pp. 166–167, *September* 20, 1871. (B.)

130. A trial, conviction and sentence by general court-martial is not *per se* a bar to the payment of bounty. It has never been considered that a sentence of court-martial for some venial offense was a bar to such payment.—*September* 20, 1871, Vol. 34, pp. 166–167. (B.)

131. A soldier, while serving as a convict under a sentence of a court-martial, cannot be deprived of any pay or allowances for the time of imprisonment, nor can such time be excluded in counting service for bounty, except as decreed by the sentence of the court.—*January* 9, 1877, Vol. 38, pp. 477–478. (C.) See, also, case of Major Herod, 13 Opin, 104; and as to allowances, U. S. *v.* Landers, 2 Otto, 77.

132. A volunteer, accepted and mustered into the service under the act of July 4, 1864, (13 Stat., 379,) whether for a period of one, two, or three years, if he is mustered out of the service before the expiration of his term of enlistment because no longer required, is only entitled to receive the proportion of bounty, allowed him by the statute, which had actually accrued before the date of his discharge.—*January* 11, 1872, Vol. 34, p. 296 (B.); *February* 17, 1882, Vol. 45, pp. 238–240; *November* 2, 1882, Vol. 46, pp. 388–389; *May* 15, 1883, Vol. 47, pp. 296–297; *February* 26, 1884, Vol. 48, pp. 430–431. (U.)

133. The President, in his proclamation of May 3, 1861, (12 Stat., 1260,) called for forty-two thousand and thirty-four volunteers. Only such as entered the service as volunteers under this proclamation and the orders issued in pursuance thereof are entitled to bounty under the act of April 22, 1872, (17 Stat., 54.) This act does not apply to soldiers who enlisted in the Regular Army.—*July* 16, 1872, Vol. 34, p. 605. (B.)

134. In computing the two years' service required for payment of bounty under section 5 of the act of July 22, 1861, (12 Stat., 270,) and section 13 of the act of July 28, 1866, (14 Stat., 322,) or the three years' service required under section 12 of the last-named act, the men enlisted in the regiments known as the Pennsylvania Reserve Corps should be credited with service from the date of their muster into the State service.—*August* 17, 1872, Vol. 34, p. 648. (B.)

135. The accounting officers have no legal right to waive a condition that the law has imposed as a condition precedent to the payment of bounty. Hence,

where a soldier enlisted May 23, 1861, for three years, and was mustered in September 29, 1861, to date from May 27, 1861: *Held*, that, inasmuch as under the act of April 22, 1872, (17 Stat., 55,) bounty was payable only to soldiers who were "actually mustered before August 6, 1861," the sole effect of the reference in the muster to an antecedent date was to shorten the term of enlistment. The actual muster not being until September 29, 1861, the soldier was not entitled to bounty under the act above cited.—*December* 9, 1872, Vol. 35, p. 93 (B.); *May* 25, 1883, Vol. 47, p. 326. (U.)

136. A soldier discharged before serving two years, in order that he might enlist in the "General Service," is not entitled to bounty under the act of April 22, 1872, (17 Stat., 55.)—*January* 11, 1873, Vol. 35, pp. 127–128. (B.)

137. Under the act of April 22, 1872, (17 Stat., 55,) bounty can be paid only to the soldier himself, as the law makes no provision for its payment to the heirs of a deceased soldier.—*June* 28, 1873, Vol. 35, pp. 365–366. (B.) But this rule applies only to soldiers who died before the passage of the act.—*May* 18, 1882, Vol. 45, pp. 540–543. (U.)

138. The fact that an applicant for bounty under the joint resolution of March 29, 1867, (15 Stat., 26,) is serving out a sentence of imprisonment in a penitentiary does not deprive him of a right to the bounty nor disqualify him from giving a valid receipt for the sum due from the United States. There is, therefore, no legal impediment in the way of payment to the applicant himself during his incarceration.—*March* 23, 1874, Vol. 35, pp. 671–672. (B.)

139. Where, under the joint resolution of March

29, 1867, (15 Stat., 26,) bounty due a colored soldier in a State where slavery existed in 1860 had been paid to the Commissioner of the Freedmen's Bureau and by him forwarded to a subordinate disbursing agent by whom it was embezzled: *Held*, that the whole duty of the accounting officers in respect thereto had been performed, and that no new settlement in favor of the soldier could be made without further authority of Congress.—*January* 26, 1876, Vol. 37, pp. 389–392. (B.) (See note to section 9, *ante*.)

140. A substitute furnished, in advance, under section 11 of the act of July 4, 1864, (13 Stat., 380,) by a person liable to the expected draft, did not become entitled to bounty.—*February* 16, 1876, Vol. 37, pp. 448–449. (B.)

141. The words "actual loss of member," as contained in paragraph 539 of Rapp's Digest, is not understood by this office as meaning amputation solely, but also as implying loss of use.—*July* 17, 1876, Vol. 38, pp. 193–194. (B.)

142. Paragraph 299 of Rapp's Digest, which states that "payments of bounty and arrears in colored cases are not made to heirs more remote than brothers and sisters, where the claimants resided in States in which slavery existed in 1861," should not be enforced. Under the acts of July 22, 1861, (12 Stat., 369,) and July 11, 1862, (12 Stat., 535,) payment of bounty is made to the heirs of decedents, *regardless of color*, in the prescribed order of inheritance.—*November* 20, 1876, Vol. 38, p. 384. (C.)

143. The word "wound" in the joint resolution of April 12, 1866, (14 Stat., 352,) is to be understood in the sense of injury, hurt, damage, as contradistin-

guished from disease or sickness.—*July* 17, 1876, Vol. 38, p. 193 (C.); *November* 24, 1877, Vol. 39, p. 481–482. (U.)

144. The twenty-five dollars instalment of bounty allowed under the joint resolution of January 13, 1864, (13 Stat., 400,) is an advance to be deducted if the soldier is discharged before serving two years, either for promotion or by reason of disability other than wounds received or sickness incurred since last enlistment.—*July* 11, 1877, Vol. 39, p. 210 (C.); *September* 23, 1882, Vol. 46, p. 273. (U.)

145. Whether or not a soldier was acting in the line of his duty at the time an injury was sustained, is a military question, in the settlement of which, in any disputed case, the decision of the War Department is binding upon the accounting officers.—*August* 11, 1877, Vol. 39, pp. 296–297. (C.)

146. The words "legal heirs of volunteers who die in service," as used in section 6 of the act of July 22, 1861, (12 Stat., 270,) are construed to mean the beneficiaries in the prescribed order of inheritance or succession enumerated in the act of July 11, 1862, (12 Stat., 535,) as entitled, on the death of the soldier in service, to the one hundred dollars bounty allowed by said act of July 22, 1861.—*September* 25, 1877, Vol. 39, p. 390. (C.) See, also, Vol. 27, pp. 40–41 (B.) and G. O. No. 191, A. G. O. of 1863.

147. Though the finding of the Surgeon-General that a soldier was not ruptured while in line of duty may be conclusive as to the right of the soldier to receive a truss under section 1176, Rev. Stat., such finding (unless the only question involved be purely a medical one) cannot be relied upon as conclusive of the case where application has been made to the

accounting officers for allowance of bounty.—*October* 25, 1877, Vol. 39, pp. 425–426. (U.)

148. When the record is silent upon the point, a claimant cannot be required, as a condition precedent to the allowance of bounty claimed by him, to apply to the War Department and secure an amendment of the record so as to show that the wound, by reason of which he was discharged, was received while in line of duty.—*October* 25, 1877, Vol. 39, p. 425. (U.)

149. A soldier who entered the service under the President's proclamation of May 3, 1861, (12 Stat., 1260,) and General Orders Nos. 15 and 25, Adjutant General's Office of 1861, became entitled, upon honorable discharge, to receive a bounty of one hundred dollars, no matter how short the period of his actual service.—*May* 26, 1876, Vol. 38, pp. 56–57 (C.); *October* 26, 1877, Vol. 39, p. 430 (U.); U. S. *v.* Hosmer, 9 Wall., 432.

150. Where the name of the alleged soldier does not appear upon any roll of the company to which he is alleged to have belonged, his claim for bounty cannot be allowed. In such a case, parol testimony to supply the deficiency cannot be considered.—*February* 12, 1878, Vol. 39, pp. 643–644. (U.)

151. The fact that a soldier was over forty-five years of age at the time of his enlistment is not, *per se*, a bar to the allowance of bounty. Where a soldier who was enrolled and mustered in on November 20, 1861, was discharged January 17, 1863, by reason of partial anchylosis of left shoulder joint *and advanced age: Held*, (it not appearing that he was charged with any deception as to his age at enlistment,) that if the anchylosis was the direct result of an injury received while in line of duty and was itself

a sufficient cause for discharge, bounty should be allowed.—*February* 14, 1878, Vol. 39, pp. 652–655. (U.)

152. Claimant, a private in the Sturges Rifles, was mustered into service June 15, 1861, to serve "during the war," and was mustered out with his company, November 22, 1862: *Held*, that the discharge was honorable and that the soldier was entitled to one hundred dollars bounty, under the act of April 22, 1872, (17 Stat., 54.)—*July* 23, 1883, Vol. 48, pp. 216–217. (U.)

153. Claimant, a member of the Sturges Rifles, was enrolled and mustered into service June 15, 1861, "for the war," was absent in hospital at date of muster-out of his organization and was discharged on surgeon's certificate, December 28, 1862: *Held*, that even upon the assumption that his organization was mustered out "by way of favor," claimant was entitled to bounty under the act of April 22, 1872, (17 Stat., 54,) it not appearing that he consented to, or was even aware of, the request preferred by his organization, through its commander, to be mustered out.—*February* 18, 1878, Vol. 39, pp. 664–667. (U.)

154. The members of the Eleventh New York Volunteers, (Fire Zouaves,) not charged with desertion or other crime, who were mustered out with their regiment, bear honorable discharges in all respects like other men of the same service, and are entitled, other conditions of the law being complied with, to the bounty under the act of April 22, 1872, (17 Stat., 55.)—*May* 26, 1877, Vol. 39, pp. 94–102. (C.)

155. A soldier discharged after less than two years' service, because he had been captured by guerrillas, is not entitled to bounty, even though it appear of

record that at the time of his discharge he was suffering from a wound received in action and that such wound would have been, of itself, sufficient cause for his discharge.—*June* 15, 1878, Vol. 40, pp. 273–274. (U.)

156. Where a soldier, who was enrolled September 2, 1863, to serve three years or during the war, was absent without leave several months, but was not tried by court martial nor required to make good the time lost, and was mustered out with his company, August 8, 1865, by reason of the termination of the war: *Held*, that under rule 8 of the Rules and Regulations of the War Department, of September 16, 1866, (Rapp's Digest, p. 111,) he should be regarded as having served out his period of enlistment: *Held, further*, that, deducting from his full term of enlistment the period of his absence, his actual term of service was more than two, but less than three years, and that accordingly he was entitled, under section 13 of the act of July 28, 1866, (14 Stat., 322,) to an additional bounty of fifty dollars only.—*July* 27, 1878, Vol. 40, pp. 308–309. (U.)

157. The time a soldier is absent without leave cannot be counted in making up the service of two years required for payment of one hundred dollars bounty under section 5 of the act of July 22, 1861, (12 Stat., 268,) and the fifty dollars bounty under section 13 of the act of July 28, 1866, (14 Stat., 322,) or in making up the service of three years required for payment of one hundred dollars bounty, under section 12 of said act of July 28, 1866, (14 Stat., 322.)—*July* 27, 1878, Vol. 40, pp. 308–309. (U.)

158. The meaning of rule 8 of the Rules and Regulations of the War Department, governing payment

of bounties under the act of July 28, 1866, (Rapp's Digest, p. 111,) is understood—in the case of a soldier not required by law, regulation, or sentence of court-martial, to make good the time lost by absence without leave—to be that a soldier discharged by reason of the close of the war is to occupy the same footing as to additional bounty as if he had continued to serve until the expiration of the period of three years from the date on which he enlisted.—*July* 27, 1878, Vol. 40, pp. 308–309. (U.)

(*a.*) But in the case of a soldier enlisted for three years under the act of July 22, 1861, (12 Stat., 270,) who was sentenced by general court-martial to make good the time lost by absence without leave, and who was mustered out by reason of the close of the war, it was held that he was entitled to full bounty of one hundred dollars under said act of July 22, 1861, and one hundred dollars under the act of July 28, 1866, (14 Stat., 322.)—Case of Charles H. Hull, private Company I, Eighteenth Connecticut Volunteers; settlement 630,743 of June 26, 1878. (U.)

(*b.*) Where a soldier who enlisted under the act of July 22, 1861, for three years, was absent without leave not more than two months, or was discharged by reason of expiration of term of enlistment or close of the war, after having served thirty-four months, full additional bounty of one hundred dollars was allowed, the soldier being under no obligation to make good the time lost.—Case of G. W. Mears, Company E, Twenty-seventh Kentucky Volunteers; settlement 646,679 of September 12, 1881. (U.)

(*c.*) But only fifty dollars additional bounty was allowed in the case of a soldier discharged by reason of expiration of term, whose actual service was re-

duced by absence without leave to 33 months and 12 days.—Case of G. R. Cline; settlement 645,971 of July 6, 1881. (U.)

(*d.*) And where the soldier's actual service, on discharge by reason of expiration of term, had been reduced by absence without leave to less than two years, bounty was disallowed.—Case of Albert Stone, Company H, Nineteenth Illinois Volunteers; settlement 630,472. (U.)

159. Colored soldiers who, prior to March 3, 1873, were deprived of bounty by reason of being borne upon their company rolls as slaves, were, by the act of that date, (17 Stat., 601,) placed upon the same footing, as to bounty and pension, as though they had not been slaves at the date of their enlistment. Hence their heirs (or statutory successors) are entitled to bounty in the order prescribed by the bounty act under which they enlisted.—*October* 16, 1876, Vol. 38, p. 346; *August* 2, 1878, Vol. 40, pp. 395–399. But claims once adjusted in accordance with the earlier view entertained by the accounting officers that the benefits of the act of March 3, 1873, attached only to surviving colored soldiers who had been slaves, will not be reopened.*—*January* 29, 1880, Vol. 42, p. 317; *November* 11, 1882, Vol. 46, pp. 421–422. (U.)

160. An enlisted man—not a veteran—of the Fourteenth New York Heavy Artillery, who enlisted prior to December 2, 1863, is not entitled to bounty under the joint resolution of January 13, 1864, (13 Stat., 400.)—*November* 19, 1878, Vol. 40, p. 635. See, also, report of the Adjutant-General, September 12, 1883,

* The phrase "at the date of their enlistment," in the act of March 3, 1873, has been regarded as surplusage, and the act has been construed to mean the same as if its final clause had read "as though they had not been slaves on April 19, 1861."

in case of Corporal A. J. Dunn, Company G, Fourteenth New York Heavy Artillery; settlement No. 14,767. (U.)

161. A soldier discharged after a service of less than two years, by reason of a disability other than a wound or injury received in line of duty, is not entitled to bounty under the act of March 3, 1863, (12 Stat, 743,) or the act of July 28, 1866, (14 Stat., 322.)—*November* 19, 1878, Vol. 40, p. 635; *January* 25 and July 24, 1882, Vol. 45, pp. 148, 678. (U.)

162. A soldier who enlisted after April 14, 1861, for three years, and was honorably discharged after serving more than two, but less than three years, on account of a disability other than wounds received in the line of duty, (the disability not existing at time of enlistment,) is entitled to the fifty dollars additional bounty allowed by section 13 of the act of July 28, 1866, (14 Stat., 322,) but not to the one hundred dollars bounty allowed by section 12 of said act.—*November* 25, 1878, Vol. 40, pp. 645–646. (U.)

163. A soldier who enlisted in the regular army prior to July 1, 1861, is not entitled to the bounty of one hundred dollars, authorized by section 5 of the act of July 29, 1861, (12 Stat., 279,) as extended by the act of March 3, 1865, (13 Stat., 487.)—*February* 4, 1878, Vol. 39, pp. 624–625; *December* 3, 1878, Vol. 40, p. 660. (U.)

164. Bounty under the act of April 22, 1872, (17 Stat., 54,) is not payable to men who enlisted for less than three years.*—*December* 14, 1878, Vol. 40, pp. 680–681. (U.)

* The bounty under the act of April 22, 1872, is not payable for enlistments in the Regular Army.

165. Where "varicocele" is the direct result of external violence, but not otherwise, it may be regarded as a "wound," within the meaning of the acts of March 3, 1863, (12 Stat., 743,) and July 28, 1866, (14 Stat., 322.)—*December* 18, 1878, Vol. 40, pp. 693–694; *January* 25, 1882, Vol. 45, p. 147. (U.)

166. A recruit, on August 15, 1864, entered a regiment (the Sixteenth Missouri Cavalry) and was mustered out therewith, July 1, 1865, by reason of expiration of term: *Held*, that he was required by his contract to serve for the unexpired term of his regiment, only, notwithstanding the fact that he was mustered in "to serve for twenty months from November 1, 1863," and that as he entered the service for the term of less than one year and actually served for no longer period, no bounty could be allowed him.*—*December* 18, 1878, Vol. 40, pp. 694–695.

167. A discharge "for promotion" is a discharge "by way of favor," within the meaning of exclusion 2, of the Rules and Regulations of the Secretary of War, governing payment of bounties under the act of July 28, 1866.—*December* 29, 1871, Vol. 34, p. 283 (B.); *November* 12, 1878, Vol. 40, pp. 624–625; *February* 17 and *May* 15, 1879, Vol. 41, pp. 147, 416; *April* 8, 1884, Vol. 48, pp. 571–575. (U.)

168. A non-commissioned officer discharged, October 19, 1864, because rendered supernumerary by reason of the consolidation of his regiment with others, is not entitled, under section 4 of the act of March

* By an act for the relief of the Fifteenth and Sixteenth Missouri Cavalry Volunteers, approved June 16, 1880, (21 Stat., 283,) bounty was authorized as follows: $100 for service of one year or more; $66.66 to those who served six months, but less than one year; $33.33 to those who served less than six months. Section 2 provides for payment to persons named therein in case of the death of the soldier who, if living, would be entitled to receive under the act.

3, 1865, (13 Stat., 488,) to the balance of veteran bounty unaccrued at the date of his discharge, even though he were suffering from a wound received in battle sufficient of itself to cause his discharge.*—*December* 19, 1878, Vol. 41, p. 4. (U.) See, also, Vol. 28, pp. 699–700, *February* 2, 1866; and, as to deduction of the twenty-five dollars advance, see Vol. 30, p. 354, *May* 1, 1867. (B.)

169. Where the record shows a "discharge for promotion" the soldier is not entitled to bounty even though it also appear by the record that "at the date of discharge he was entitled to be discharged by reason of gunshot wound (loss of leg) received in action May 3, 1863." The record must first be so amended as to declare that the soldier was discharged as an enlisted man on account of wounds received in the line of duty.—*February* 17, 1879, Vol. 41, pp. 146–148; *January* 20, 1882, Vol. 45, p. 137. (U.)

170. Men who enlisted in the ordnance corps were not embraced within the terms of General Orders No. 190, Adjutant-General's Office, of 1863, and did not become entitled to the premium and bounty thereby authorized.—*August* 8, 1866, Vol. 29, pp. 369–370; *March* 3 and *October* 6, 1868, Vol. 31, pp. 199, 599–600 (B.); *March* 17, 1879, Vol. 41, pp. 218–222. (U.)

171. But where a soldier enlisted into a fighting arm of the service and was afterwards transferred into the ordnance corps, he did not thereby forfeit the bounty promised him under his contract of enlistment.

* By decision of the War Department, all non-commissioned officers mustered out after April 28, 1865, by reason of being superuumerary in consolidation, in consequence of the War Department orders for the reduction of the Army, are regarded as mustered out because their services are no longer required by reason of the close of the war, and are entitled to bounty accordingly.—See paragraphs 493–495 of Rapp's Digest, p. 152.

—*October* 6, 1868, Vol. 31, pp. 599–600: *Provided*, the transfer was not made at his own request.—*March* 3, 1868, Vol. 31, p. 199. (B.)

172. And, *semble*, that if the enlistment was originally in the ordnance corps, and the soldier was transferred to a fighting branch of the service, he became entitled to bounty.—*March* 3, 1868, Vol. 31, p. 199. (B.)

173. Service in the Navy by persons transferred from the military to the naval service cannot be counted to make up the period required by sections 12 and 13 of the act of July 28, 1866, (14 Stat., 322,) to entitle them to additional bounty.—*June* 21, 1870, Vol. 33, pp. 179–180 (B.); *March* 12, 1879, Vol. 41, p. 207. (U.) See, also, 14 Opin., 223.

174. The fact that payment of the bounty claimed was urged by the enlisting officer as a special inducement to secure the claimant's re-enlistment, imposes (in the absence of any law authorizing its payment) no obligation upon the Government.—*March* 17, 1879, Vol. 41, p. 222. (U.)

175. Where a soldier who had received the advance bounty of twenty-five dollars allowed by section 6 of the act of July 5, 1862, (12 Stat., 505,) was discharged after less than two years' service, and the sum so advanced was deducted by the paymaster by whom he was paid at final discharge, and subsequently his widow filed a claim for refundment: *Held*, that under the act of March 3, 1863, (12 Stat., 743,) the claim should be allowed, it being shown that the soldier was discharged upon surgeon's certificate of disability for disease incurred subsequent to his last enlistment.—*January* 7 and *March* 31, 1879, Vol. 41, pp. 36–37, 271; *January* 25, 1882, Vol. 45, p. 148. (U.)

176. It is the rule not to accept testimony in contradiction of the records of the War Department; but when those records are silent as to the origin of any disability and the question of origin is material, it is the common practice to receive parol evidence to show the origin. The act of March 3, 1863, (12 Stat., 743,) does not require that a claim for payment of advance bounty erroneously charged against a discharged soldier shall be supported by record evidence showing that the disability which caused discharge was incurred since enlistment, and hence—the record being silent upon this question—parol evidence will be received to prove when the disease or wound was contracted.—*January* 7, 1879, Vol. 41, pp. 36–38. (U.)

177. A soldier who enlisted in August, 1861, for three years cannot receive bounty unless he continued in service for two years, or was discharged by reason of wounds or injury received while in line of duty, since a discharge within two years from enlistment could not have been because of the close of the war. One who enlisted under the provisions of the act of July 4, 1864, (13 Stat., 379,) and who was discharged by reason of the close of the war, is entitled only to such instalments of bounty as had matured at the date of his discharge.—*March* 27, 1879, Vol. 41, p. 262; *February* 17, 1882, Vol. 45, pp. 238–240. (U.)

178. A rebel deserter, not a prisoner of war, who enlisted in a Union organization—enlistments in which, as a general rule, carried bounty—is not disqualified from receiving bounty, if the conditions of the bounty law be otherwise fulfilled.*—*April* 9, 1879, Vol. 41,

* For an exception to this rule, applicable to rebel deserters enlisting in the First Alabama Cavalry after November 14, 1864, see President's veto message of July 14, 1870, Senate Ex. Doc. No. 111, 41st Congress, 2nd session.

pp. 300–306. (U.) (Overruling section 721 of the Digest of 1869.)

179. The fact that a soldier received a pension for a disability incurred while in line of duty does not necessarily entitle him to bounty because of such disability. A pension may be granted whether the soldier was discharged by reason of the disability or not, but the payment of bounty to a soldier who enlisted in October, 1861, and was discharged before serving two years, depends upon his having been discharged by reason of a wound received in the line of duty.*—*May* 17, 1879, Vol. 41, pp. 420–421; *May* 18. 1882, Vol. 45, p. 539. (U.)

180. A soldier was enrolled October 16, 1861, for three years and was discharged November 7, 1862, by reason of "lameness produced by a sprain of his back" received while removing, or attempting to remove a wounded man from the field, under orders: *Held*, that his injury was a "wound" in the sense of the acts of March 3, 1863, (12 Stat., 758,) and July 28, 1866, (14 Stat., 322,) and that he was entitled to bounty under said acts.—*June* 6, 1879, Vol. 41, pp. 468–470. (U.)

181. A marine who has received a discharge on the ground that he was illegally enlisted is not entitled to the bounty authorized by the President's proclamation.—*December* 29, 1879, Vol. 42, p. 219. (U.)

182. One who enlisted September 20, 1861, as a musician in a regimental band which was mustered out August 13, 1862, under the act of July 17, 1862, (12 Stat., 594,) is not entitled to any bounty.—*December* 31, 1879, Vol. 42, pp. 227–229. (U.)

* For definition of "wound," see section 143, *ante*. See, also, sections 126, 127, 165, *ante*, and section 180, *post*.

183. A soldier who re-enlisted as a veteran under the provisions of General Orders No. 191, Adjutant General's Office, of 1863, and was subsequently discharged for promotion, is not entitled to any instalment of veteran bounty that had not become due at the date of his discharge.—*April* 3, 1878, Vol. 40, pp. 100–102; *December* 31, 1879, Vol. 42, pp. 232–233. (U.)

184. Members of the Second Battalion, Missouri State Militia Cavalry, who were not mustered out with the organization, but were individually discharged by reason of wounds received in line of duty, are entitled to a bounty of two hundred dollars, or so much thereof as may remain unpaid; and, *semble*, that where a member of said organization has died, his widow, children, or other statutory representative named in the act of July 11, 1862, (12 Stat., 535,) is so entitled; as also are the statutory representatives of members who died or were killed in service.—*January* 5, 1880, Vol. 42, pp. 248–259. (U.)

185. To entitle a soldier to bounty accruing subsequent to his discharge, under the act of March 3, 1865, (13 Stat., 487,) it must appear that he was discharged by reason of wounds or injury received during the same term of enlistment. It is not sufficient that the disability was incurred while he was in service under a previous enlistment.—*January* 13, 1880, Vol. 42, pp. 277–279; *August* 23, 1882, Vol. 45, pp. 140–142; *September* 23, 1882, Vol. 46, p. 273. (U.)

186. Where, pending consideration of her claim for additional bounty under acts of July 28, 1866, (14 Stat., 322,) and February 21, 1868, (15 Stat., 37,) the mother of the deceased soldier dies, the bounty is not payable to her administrator.—*February* 14, 1880, Vol.

42, pp. 362–364; *May* 10 and *June* 6, 1882, Vol. 45, pp. 522, 605–606; *March* 13 and *April* 26, 1883, Vol. 47, pp. 111, 226–227. (U.)

187. An overpayment of arrears of pay and original bounty made to the widow of a deceased soldier prior to the passage of the act of July 28, 1866, constitutes no bar to the payment of a claim for the additional bounty provided for by said act, made by the only child of the deceased soldier, after a remarriage of the widow. The rights of the widow and child are distinct and independent.—*February* 17, 1880, Vol. 42, pp. 370–372. (U.)

188. Neither drafted men nor their substitutes are entitled to bounty under the act of July 28, 1866, (14 Stat., 322.)—*February* 17, 1880, Vol. 42, p. 375. (U.)

189. A soldier enrolled to serve three years died in service, leaving neither widow, child, nor mother, but leaving a father and several brothers and sisters, all of whom were disloyal save one sister: *Held*, that under the last proviso of section 4 of the act of July 14, 1862, (12 Stat., 568,) the loyal sister was entitled to all arrears of pay and bounty as provided for by section 6 of the act of July 22, 1861, (12 Stat., 270,) and section 1 of the act of July 11, 1862, (12 Stat., 535.)*—*March* 9, 1880, Vol. 42, pp. 434–438. (U.)

190. A veteran volunteer member of the Mississippi Marine Brigade, mustered out with his company under the provisions of paragraph 46 of Special Orders No. 431, Adjutant-General's Office, December 5, 1864, cannot be regarded as having been mustered out "by reason of service being no longer required," within the meaning of paragraph 4 of General Orders No.

* This decision overrules sections 234 and 689 of the Digest of 1869.

191, Adjutant-General's Office, of 1863, and he is, therefore, only entitled to such unpaid bounty as had accrued up to and including the date of his discharge.*—*March* 11, 1880, Vol. 42, pp. 444–448; *April* 26, 1881, Vol. 44, pp. 32–33. (U.)

191. A veteran discharged before expiration of term, for other cause than wounds received in line of duty, is not entitled to full bounty unless mustered out in consequence of the close of the war; and the entire bounty is allowed only when the men were mustered out after and in consequence of the orders issued for the reduction of the volunteer forces, beginning with General Orders No. 77, Adjutant-General's Office, dated April 28, 1865.—*March* 11, 1880, Vol. 42, pp. 444–448; *April* 26, 1881, Vol. 44, pp. 32–33. (U.)

192. The terms of General Orders No. 191, Adjutant-General's Office, June 25, 1863, require it to be held that no soldier becomes entitled, under that order, to receive "the whole amount of bounty remaining unpaid, the same as if the full term had been served," unless he was mustered out because the Government no longer required "these troops," *i. e.*, the whole body of troops enlisted under said order, which could only be when the war was ended.—*March* 11, 1880, Vol. 42, pp. 444–448; *April* 26, 1881, Vol. 44, pp. 42–43. (U.)

193. The only law considered in the decision which is incorporated in section 193 of the Digest of 1869 was the act of July 22, 1861. That decision was to the effect that where the reason given for a soldier's discharge was that his services were no longer needed, and at the time of his discharge the war was ended,

* For rule in regard to deduction of $25 advance bounty, see Vol. 30, p. 354, *May* 1, 1867. (B.)

such discharge was equivalent to one expressed to be for the reason that the war was ended. The rule applied to cases arising under the act of 1861 is stated correctly and with less ambiguity in sections 190 and 191 of said Digest.—*December* 31, 1879, Vol. 42, pp. 228–229. (U.)

194. Soldiers re-enlisting in accordance with the provisions of section 29 of the act of July 5, 1838, (5 Stat., 260,) and under the conditions of section 3 of the act of June 17, 1850, (9 Stat., 438,) are entitled to both extra pay and bounty as provided by these acts.*—*July* 2, 1880, Vol. 43, pp. 37–38 (U.); 6 Opin., 187.

195. Soldiers who entered the service for two years only are not entitled to any bounty under the President's proclamation of May 3, 1861, or under General Orders Nos. 15 and 25, Adjutant-General's Office, of 1861, or the act of April 22, 1872, (17 Stat., 55.)—*March* 18, 1880, Vol. 42, pp. 468–469. (U.)

196. A soldier mustered in "for the unexpired term of his regiment," which had previously been organized to serve two years, cannot be said to have enlisted "for a period of not less than two years," and therefore he is not entitled to bounty under section 13 of the act of July 28, 1866, (14 Stat., 322,) nor under section 4 of the act of March 3, 1865, (13 Stat., 488;) but if discharged by reason of wounds received in battle, he is entitled to the original bounty of one hundred dollars provided for by the act of March 3, 1863, (12 Stat., 743.)—*March* 12 and *May* 25, 1880, Vol. 42, pp. 455–457, 651. (U.)

197. Under the act of March 3, 1873, (Rev. Stat., section 4723,) where all the parties were slaves and

* Overruling section 333 of the Digest of 1869.

the father and mother of a deceased colored soldier are dead, his half-blood brothers and sisters (whether born of the same mother as the soldier or begotten by the same father) are equally entitled with his brothers and sisters of full blood to share in the arrears of pay and bounty due the soldier; and this, without other evidence of the marriage or remarriage on which their rights depend than such as is furnished by general reputation and cohabitation, provided the cohabitation was at the proper time and there is no evidence sufficient to rebut the presumption to which it gives rise.—*March* 31, 1880, Vol. 42, pp. 501–503 (U.); 16 Opin., 630.

198. Where, from the certificate of disability originally issued to a soldier, it appeared that he was discharged by reason of incipient phthisis, supposed to have been caused by severe exposure while in service, but the amended War Department record showed that the disability was caused by injury and exposure, but explicity stated that the injury alone would not have entitled him to a discharge: *Held*, that the soldier was not discharged by reason of an injury received in the line of duty, within the meaning of the law, and hence was not entitled to bounty.—*May* 10, 1880, Vol. 42, p. 610 (U.)

199. Section 333 of the Digest of 1869, to the effect that "a soldier who re-enlists, at remote and distant stations, is not entitled to both extra pay and bounty," overruled.*—*July* 2, 1880, Vol. 43, pp. 37–38 (U.); see, also, 6 Opin., 187, and G. O. No. 27, A. G. O., of 1853.

200. An enlisted man who receives his discharge while under sentence of imprisonment imposed by a

*Section 29 of the act of July 5, 1838, (5 Stat., 260,) and section 3 of the act of June 17, 1850, (9 Stat., 439,) were repealed by section 9 of the act of August 3, 1861, (12 Stat., 288.)

general court-martial must be regarded as *dishonorably* discharged and, therefore, as not entitled to bounty under the act of July 28, 1866, (14 Stat., 322.)—*August* 16, 1880, Vol. 43, p. 153. (U.)

201. Where a soldier, who was sick in hospital at the time of his discharge, left the hospital and did not return thereto, but afterwards was admitted to another hospital, where he died: *Held*, that his widow was not entitled to original bounty of one hundred dollars, the requirements of section 3 of the act of July 2, 1864, (13 Stat., 356,) not having been fulfilled.—*August* 16, 1880, Vol. 43, p. 155. (U.)

202. The disability contemplated by paragraph 4 of the Rules and Regulations promulgated by the War Department September 16, 1866, (Rapp's Digest, p. 112,) cannot be said to have existed *at time of enlistment*, notwithstanding the disease occasioning it may have, in some degree, then existed, if the soldier rendered such effective service for a sufficient period immediately following his enlistment as to show that the disease did not at that time disqualify him for a soldier's duties.—*October* 8, 1880, Vol. 43, p. 282. (U.)

203. A soldier, enrolled June 13, 1861, who was discharged for promotion on June 27, 1864, was not "discharged during enlistment," within the meaning of exclusion 2 of Rules and Regulations of the Secretary of War, governing payment of bounties under the act of July 28, 1866, (14 Stat., 322.)—*November* 9, 1880, Vol. 43, p. 322. (U.)

204. Under a sentence of general court-martial, forfeiting "all pay and allowance," *bounty* is included in the forfeiture.—*December* 10, 1880, Vol. 43, p. 403 (U.); U. S. *v.* Landers, 2 Otto, 80.

205. To justify payment to an heir of a deceased soldier of bounty under the act of July 28, 1866, (14 Stat., 322,) it must appear that the soldier died in the service, or that he died after discharge and *before the date of the act*, of disease or wounds contracted while in service and in the line of duty. The acts of February 21, 1868, and March 3, 1869, (15 Stat., 37 and 334,) do not authorize payment of additional bounty to a soldier's heir where the soldier was discharged, before serving two years, for disability not caused by wounds received in the line of duty, *if he died after* July 28, 1866.—*January* 3, 1881, Vol. 43, p. 460. (U.)

206. H. was enrolled and mustered into service January 10, 1862, and was discharged September 9, 1862, by reason of "orchitis." Upon evidence that the orchitis arose from external injuries caused by the falling upon him of a box of arms which he was assisting in carrying while engaged in loading a vessel at Paducah, Kentucky, in March, 1862: *Held*, that bounty should be allowed him as follows: One hundred dollars under act of March 3, 1865, (13 Stat., 487,) as construed by joint resolution of April 12, 1866, (14 Stat., 352,) and one hundred dollars under section 12 of the act of July 28, 1866, (14 Stat., 322.)—*June* 14, 1881, Vol. 44, pp. 194–195. (U.)

207. By desertion at any time within the period of his enlistment, a soldier forfeits his right to any bounty which was due and unpaid at the time of desertion, or which might have become due had he not deserted.—*March* 5, 1878, Vol. 40, pp. 9–13; *September* 18, 1879, Vol. 42, pp. 20–23; *January* 19, 1880, *ibid.*, pp. 293–294; *February* 12, 1881, Vol. 43, pp. 567–568; *May* 9, 1881, Vol. 44, pp. 78–80 (U.); 13 Opin., 185; U. S. *v.* Landers, 2 Otto, 77.

208. A soldier discharged, before serving two years, for two causes, one of which was an injury, is entitled to receive the same bounty as if he had served out his full term, if it appear that the injury was of itself sufficient to disable him and to justify his discharge, and was received in the line of duty.—*July* 16, 1881, Vol. 44, pp. 290–292; *November* 6, 1882, Vol. 46, p. 394. (U.)

209. A soldier discharged on account of disability existing at the time of his enlistment is not entitled to bounty under the act of July 28, 1866, (14 Stat., 322–323.)—*July* 16, 1881, Vol. 44, pp. 293–294. (U.)

210. Before bounty can be allowed to one claiming as a child of a deceased soldier, it must appear that the claimant is a legal heir of the soldier.—*July* 28, 1881, Vol. 44, pp. 339–342. (U.)

211. A soldier who was enrolled August 13, 1863, to serve three years, and who was discharged March 4, 1865, by reason of chronic rheumatism which existed previous to enlistment, is not entitled to any bounty whatsoever.—*September* 9, 1881, Vol. 44, pp. 455–456. (U.)

212. In the case of a soldier transferred to the Navy, and subsequently appointed a mate prior to the expiration of two years' service: *Held*, that if he was discharged from service in order that he might accept the appointment of mate, his term of service terminated, so far as bounty is concerned; but that if he was appointed mate without being discharged from his enlistment as a soldier, he would be entitled to bounty.—*July* 15, 1879, Vol. 41, pp. 570–571. (U.)

213. Where a claim was made in June, 1866, for arrears of pay "and the bounty provided by the sixth section of the act of July 22, 1861, and all other

acts in addition or amendatory thereto," and no other claim was filed until after the time for presenting claims for bounty under the act of July 28, 1866, had expired by limitation: *Held*, that the terms of the claim were broad enough to authorize an allowance of bounty under the act of July 28, 1866, and that the service of the claimant in the Ninth Massachusetts Volunteers being clearly established, whereby he became entitled to bounty under the last mentioned act, additional bounty should be allowed, notwithstanding the fact that there was no specific reference to that organization in the body of the claim.—*December* 20, 1881, Vol. 45, p. 37; *June* 10, 1882, Vol. 45, pp. 614–615. (U.)

214. Where the record shows that a soldier was discharged by reason of a wound, and the evidence is conclusive that he was free from the wound at the date of his enlistment, and there is no intimation that the wound was received while on furlough or while engaged in any unlawful or unauthorized act or pursuit (see joint resolution of April 12, 1866, (14 Stat., 352,) it may be regarded as evident that the wound was received in the line of duty, and bounty may be granted accordingly.—*February* 16, 1882, Vol. 45, pp. 234–235. (U.)

215. In practice, a specific claim for bounty under the act of July 28, 1866, has not been insisted on as an absolute condition to its payment; neither has it been required that the application should be executed after the date of the act.—*June* 10, 1882, Vol. 45, pp. 614–615. (U.)

216. As the law now stands, (act of July 5, 1876, 19 Stat., 74,) bounty under the act of July 28, 1866, (14 Stat., 322,) cannot be allowed unless it appears

that a sufficient claim was filed on or before July 1, 1880. But where a soldier filed a claim for arrears of pay and one hundred dollars bounty in 1865, at which date he was entitled to bounty only under the act of July 22, 1861, and afterwards (the soldier being insane) a claim for bounty under the act of July 28, 1866, was filed by his guardian: *Held*, that, in harmony with the uniform practice of the accounting officers of allowing both the bounty under the act of 1861 and that under the act of 1866, upon evidence showing that claimant was entitled to both, without requiring a claim to be filed for the latter in cases where one for the former had been filed *before*, but no settlement had been made thereon until *after* the passage of the act of 1866, the claim filed by the guardian might be allowed, although filed subsequent to July 1, 1880, no part of the claim filed by the soldier having been adjusted until March 14, 1867.—*August* 2, 1883, Vol. 47, pp. 511–512. (U.)

217. There is no law authorizing the payment of bounty on account of the services of commissioned officers.—*March* 16, 1882, Vol. 45, pp. 341–342. (U.)

218. A soldier was enrolled September 15, 1862, for three years, served over two years and was discharged on surgeon's certificate of disability, because of disease existing prior to enlistment: *Held*, that he was entitled to one hundred dollars bounty under the act of July 22, 1861, and to fifty dollars additional bounty under section 13 of the act of July 28, 1866, upon the principle that the disease, though existing at the time of enlistment, did not then disqualify him for the duties of a soldier, and hence that the disability could not be said to have existed at the time of enlistment.—*April* 22, 1882, Vol. 45, pp. 461–462. (U.)

219. A member of the Fifteenth Missouri Cavalry Volunteers, who was entitled to bounty under the act of June 16, 1880, died before the check, which was issued for the bounty, was mailed: *Held*, that under the second section of that act his wife, but not his administrator, was entitled to the bounty: *Held, further*, that it would be necessary for her to file a new bounty claim, with evidence of her relationship and identity.—*May* 10, 1882, Vol. 45, p. 522. (U.)

220. Bounty cannot be paid, under the act of July 4, 1864, (13 Stat., 379,) to any person who enlisted prior to July 18, 1864.—*May* 22, 1882, Vol. 45, p. 561. (U.)

221. The act of July 28, 1866, (14 Stat., 322,) specifically provides that no bounty shall be paid thereunder to any discharged soldier who had received, under laws then existins, a greater bounty than one hundred dollars.—*May* 29, 1882, Vol. 45, p. 589. (U.)

222. Where a claim for arrears of pay and bounty due a deceased soldier is made by a woman claiming as his foster mother, but there is no proof that the deceased has ever been adopted in any manner recognized by law as giving to the claimant the rights and privileges of a mother: *Held*, that she was not a legal heir within the meaning of the act of July 22, 1861, (12 Stat., 263,) or the joint resolution of January 13, 1864, (13 Stat., 400,) and hence was not entitled.—*June* 24, 1882, Vol. 45, p. 679. (U.)

223. Where a claim for arrears of pay and bounty due a deceased soldier has been allowed to one claiming wrongfully as his heir, and the true heir afterwards appears, satisfactorily establishes relationship, and proves that the erroneous payment was the result, in no respect, of laches on his part, and that no

benefit was derived by him from it: *Held*, that the rightful heir is entitled to recover full arrears of pay and bounty, as if no erroneous settlement had been previously made.—*November* 14, 1882, Vol. 46, pp. 427–428. (U.)

224. A private in company A, Third Maine Volunteers, was enrolled on April 23, 1861, to serve three years; was mustered into service June 4, 1861; was discharged July 20, 1861, by reason of hernia which existed prior to enlistment: *Held*, (there being no evidence of fraud on his part in the enlistment,) that as the requirements of General Orders Nos. 15 and 25 of 1861 and those of the act of April 22, 1872, (17 Stat., 54,) had all been fulfilled, and as the discharge took place prior to the date, August 3, 1861, of General Orders No. 51, of 1861, which denied pay and allowances to a soldier discharged within three months after entering the service for a disability existing at the time of enlistment, he was entitled to bounty under said act.—*July* 6, 1882, Vol. 46, p. 13. See, also, the case of James F. Dunsmore, *ibid*, pp. 13–14. But see case of Elias Palmer, Company K, Eighth Illinois Volunteers, (settlement No. 3058, confirmed March 1, 1884,) in which it was held that General Orders No. 51, of 1861 was not applicable to the case of a soldier who was mustered into service before August 3, 1861, whether he was discharged before or after that date. (U.)

225. It has been the custom of the War Department to refuse to recognize as veterans men who reenlisted prior to January 1, 1863. But General Orders No. 191, Adjutant-General's Office, June 25, 1863, as amended by General Orders No. 216, Adjutant General's Office, of 1863, is retrospective in the pro-

visions for veteran bounty therein contained; and a soldier who, after commencement of the rebellion, served continuously for not less than nine months, and, having been honorably discharged, re-enlisted for three years or during the war, is entitled to veteran bounty whether he re-enlisted before January 1, 1863, or after that date and prior to the expiration of the period limited by the joint resolution of March 3, 1864. The above-mentioned veteran orders were ratified and given the force and effect of law by the joint resolutions of December 23, 1863, (13 Stat., 399,) January 13, 1864, (13 Stat., 400,) and March 3, 1864, (13 Stat., 403.)—*July* 13, 1882, Vol. 46, pp. 169–174. (U.)

226. R. was enrolled and mustered into the service as a private of the One Hundred and Ninety-third New York Volunteers, April 5, 1865, to serve two years. Having received a commission from the governor of New York, he applied to be and was discharged from this regiment, to date April 25, 1865, and was mustered in as a second lieutenant of the One Hundred and Ninety-fourth New York Volunteers to date the following day, with the condition that he should refund all bounties which he had received as an enlisted man. A local bounty of four hundred dollars had become due him from the county of Onondaga, New York, of which a part had been paid. The remainder (two hundred and forty-eight dollars and twelve cents) was intrusted by the county authorities to a provost marshal, for delivery to him, and thence passed into the hands of a United States paymaster who accounted for it. The county received a credit upon its quota because of R.'s enlistment, of which credit it has never been deprived nor ever sought

to be; neither has the county ever asserted a claim for the two hundred and forty-eight dollars and twelve cents, nor did R. promise the county to refund the four hundred dollars bounty or any part of it, and there was no consideration moving from the county for any undertaking on his part. He now files a claim for the two hundred and forty-eight dollars and twelve cents received by the United States: *Held*, that the original contract between R. and the county was valid and was fully executed; that the enlistment of R. by which the county received a credit of one upon its quota, was the consideration of the payment of the four hundred dollars bounty, and that R. is properly entitled to a credit of the two hundred and forty-eight dollars and twelve cents by the United States. As, however, R. had received a bounty of two hundred dollars from the United States, as a private in the Eighty-sixth New York Volunteers, the right to which he forfeited by desertion, therefore he is a debtor to the United States, and so much of the money in the possession of the Government, belonging to him, as may be needed to extinguish his indebtedness to the Government, should be so applied, (15 Peters, 370,) and the balance paid over to him.—*August* 18, 1882, Vol. 46, pp. 186–190. (U.)

227. A soldier was mustered in as a private, September 20, 1864, to serve three years, and drew an instalment of bounty, (one hundred dollars,) on November 22, 1864, under the act of July 4, 1864, (13 Stat., 379.) Having received a commission from the governor of New York, he applied, on November 26, 1864, to be discharged as a private and mustered in as a captain. His request was refused, until he should refund the one hundred dollars bounty drawn by him.

This he did; whereupon he was discharged, and mustered in as a captain, to date the following day. Fifteen years afterwards he filed a claim for the bounty so refunded: *Held*, that whatever view be taken of the case, claimant cannot recover. If the transaction was in all respects legitimate, he cannot recover, of course; if the demand that he should refund was made on the ground that he was under a legal obligation so to do, he must be regarded as having admitted the correctness of that view, and (his voluntary repayment being by mutual mistake of law) there can be no recovery; if the amount in question was demanded from him, and returned by him, as a price or reward for his office, the law will not interfere, but will leave the claimant where it finds him.—*August* 18, 1882, Vol. 46, p. 190. (U.)

228. A soldier was enrolled, July 18, 1864, to serve three years, and died in service, September 3, 1864. A certificate for three hundred dollars bounty, under the act of July 4, 1864, (13 Stat., 379,) and seventeen dollars and thirty-three cents arrears of pay was made out in favor of the deceased soldier's mother. She died, and the certificate was cancelled. Her administrator afterwards filed a claim for the benefit of the husband of the mother, for the amount of the mother's certificate, three hundred and seventeen dollars and thirty-three cents. Said husband was not the father of the soldier. The claim was disallowed for the following reasons: Where a soldier enlisted under the act of July 4, 1864, and died in the service, no bounty which had not become due to him prior to his death can be paid to any one except his widow, his children, or his widowed mother; and in the event of the death of all such specified heirs, without pay-

ment, no bounty which had not so become due can be paid to any one in any capacity. Furthermore, the estate of a deceased mother (no action equivalent to payment to the mother being taken in her lifetime) can recover nothing on account of matured instalments of bounty or arrears of pay due a deceased soldier.—*March* 15, 1883, Vol. 47, pp. 113–115. See, also, Vol. 47, pp. 90–93. (U.)

229. Until a claim for matured bounty or arrears of pay is actually paid, or some action equivalent to payment is taken, (it matters not how many accounts are stated,) the right to the arrears of pay and matured bounty is understood to shift from one to another of the heirs named in the act of July 11, 1862, (12 Stat., 535,) until the last one is reached; and, all of them having died without payment, the amount due becomes payable to the heirs general, the next of kin, of the soldier. The heirs named in the act of 1862 being exhausted, and the soldier dying intestate, the preferable and perhaps the only proper course is to recognize only the administrator of the soldier, and to recognize him only when it appears affirmatively that there are heirs or creditors of the soldier.—*March* 7, 1883, Vol. 47, pp. 90–93, 113–15. (U.)

230. When a check for bounty under the act of July 28, 1866, is issued and mailed to the payee named in the certificate, and the payee dies afterwards and before payment of the check, such check becomes part of the payee's estate and may be paid to his administrator. When, however, a check for such bounty is not mailed until after the payee's death, it should be surrendered and the case adjusted as required by the act of February 21, 1868.—Divi-

sion Letter Book, *March* 7, 1883, case (No. 3798) of John Washington, private Co. A, 5th W. Va. Cav. (U.)

231. A soldier was enlisted and mustered into service as a substitute, July 28, 1863, to serve three years or during the war. He was discharged December 22, 1863, by reason of "incontinence of urine, incipient tuberculosis, loss of right thumb, and functional disease of the heart": *Held*, that loss of right thumb was in itself sufficient cause for the soldier's discharge, and that, as his military record showed that he was not on furlough or leave of absence at the time of its loss, it must be presumed that he was "in the line of duty" when wounded: *Held, further*, that as wrong-doing will never be presumed, a soldier will not be deemed to have been engaged "in an unlawful or unauthorized act or pursuit" unless the fact that he was so engaged appears upon his military record, or is otherwise affirmatively shown.*—*October* 12, 1883, Vol. 48, pp. 30–31. (U.)

232. Claimant was enrolled August 20, 1862, under the provisions of the act of July 22, 1861, to serve *one year*, and was discharged February 24, 1863, by reason of an injury caused by his being thrown from his horse while on duty. He averred that the injury was received while he was on picket, and claimed bounty under section 4 of the act of March 3, 1865, (13 Stat., 488:) *Held*, that he could take nothing under that act, since, even if he had served

*The true intent and meaning of the words "in line of duty," as used in section 4 of the bounty act of March 3, 1865, (13 Stat., 488,) and defined by the joint resolution of April 12, 1866, (14 Stat., 352,) "requires that the benefit of the provision of said section shall be extended to any enlisted man or other person entitled by law to bounty, who has been or may be discharged by reason of a wound received while actually in service under military orders, not at the time on furlough or leave of absence, nor engaged in any unlawful or unauthorized act or pursuit."

out his full term (one year), he would not have been entitled to any bounty; that the act of July 22, 1861, controlled his case, and that, as section 5 thereof (12 Stat., 270,) requires service "for a period of two years, or during the war, if sooner ended," as a condition precedent to the allowance of bounty, his claim could not be admitted.—*March* 8, 1884, Vol. 48, p. 475. (U.)

233. A soldier, after completing a term of two years' service in the Tenth New York Volunteers, was mustered into the Twenty-eighth Massachusetts Volunteers, as a substitute, in August, 1863, to serve three years; received an advance of twenty-five dollars bounty under the act of July 5, 1862, (12 Stat., 509,) and deserted June 26, 1864: *Held*, that as he failed to serve two years in the latter organization and was never honorably discharged therefrom, the amount so advanced never became his property, and that, as his desertion did not affect his rights under his first enlistment, (section 1310 of Digest of 1869,) he was entitled to the benefits of section 13 of the act of July 28, 1866, (14 Stat., 310.)—*April* 8, 1884, Vol. 48, pp. 576–577. (U.)

234. Money advanced to a soldier under section 6 of the act of July 5, 1862, (12 Stat., 509,) was not absolutely his, but remained the property of the United States and never ceased to belong to the United States unless the soldier died in service, or was discharged after serving two years or because of the close of the war, or was discharged within two years for disability "incurred since last enlistment" The purpose of sections 12 and 13 of the act of July 28, 1866, (14 Stat., 322,) was to grant additional bounty to each of the soldiers described

therein who had not become unconditionally entitled to a greater bounty than one hundred dollars; and a soldier, in order to have "received" bounty within the meaning of the latter act, must not only have obtained possession of it, but must have had a right to keep it. Hence, a soldier who enlisted August 9, 1861, for three years; was discharged, and re-enlisted for three years April 19, 1864; received one hundred dollars bounty under the act of July 22, 1861, for his first service; and was again discharged, for promotion, and was mustered in as a first lieutenant April 26, 1865, is entitled to the benefits of section 13 of the act of 1866, even if an advance was made under the act of 1862, when he re-enlisted, and the amount has not yet been refunded.—*April* 8, 1884, Vol. 48, pp. 571–575. (U.)

BRIDGES.

See Railroads, 1049, 1056, 1068; Territories, 1134.

CADETS.

See, also, Bounty, 125; Traveling Expenses, 1173, 1186.

235. Upon graduation from the West Point Military Academy, cadets are not entitled, *as of right*, to commissions in the Army, (section 1213, Rev. Stat.,) nor is a graduated cadet's appointment to the office of

second lieutenant a promotion. Such appointment is now, and is believed to have always been, regarded as an original appointment, and graduated cadets are now, and it is believed that they always have been, paid as commissioned officers from date of graduation.—*November* 10, 1883, Vol. 48, pp. 105–107. (U.)

CERTIFICATES.

See Treasury Certificates.

CHARGES.

See Fees and Charges.

CHARTER-PARTY.

See, also, Evidence, 458.

236. Where the charter-party contains a provision that the owner shall bear the "marine" and the Government the "war" risks, loss from common grounding falls on the owner.—*August* 7, 1867, Vol. 30, p. 509; *January* 23, 1869, Vol. 32, pp. 44–46. (B.)

237. Where a steamer (the "Keyport") was under charter to the Government "for so long as her services

might be desired," and the proper department served notice on the owner of the vessel, some time after her employment and use, that the rate of pay would be reduced from two hundred and twenty-five dollars per day to one hundred and seventy-five dollars per day, and the owner made no response either of assent or dissent, but when tender of payment was made, at the reduced rate, received and receipted for the same without protest and so continued to do from time to time: *Held*, that this was due acceptance at the reduced rate; that assent to a contract may be given by actions, by receipts, by signs, and even by silence, as well as by express language.—*January* 15, 1869, Vol. 32, pp. 33–34 (B.); Story on Contracts, 378–379; Chitty on Contracts, 19–25.

238. Where a charter-party contained a stipulation on the part of the Government "to furnish all fuel": *Held*, that it was incumbent upon the Government to place the fuel *on board*, and that when, by reason of a deficiency in the laboring force at the command of the post-quartermaster at a coaling station, the merchant furnishing the fuel was employed to place the same on board the vessel, the United States was bound to pay him for so doing.—*October* 25, 1869, Vol. 32, pp. 494–495. (B.)

239. Where a charter-party contained a stipulation on the part of the United States, as follows: "The amount of two hundred tons guaranteed by the party of the second part": *Held*, that the Government was bound to pay for two hundred tons of freight, notwithstanding only one hundred and seventy-four tons were shipped.—*March* 12, 1870, Vol. 33, pp. 52–54 (B.); Abbot on Shipping, pp. 265, 276.

240. When a vessel is in the service of the Gov-

ernment, under charter, it is not in the power of the officers connected with the chartering arbitrarily to impose upon her owner terms and conditions different from those in the charter-party.—*May* 8, 1871, Vol. 33, p. 623; *June* 24, *November* 25, and *December* 9, 1871, Vol. 34, pp. 57–59, 244–245, 257–258 (B.); Pratt's case, 3 Court of Claims Reports, 105.

241. Where a party allows his vessel to remain in the service after her charter-party has been disapproved by the Quartermaster-General, and a reduction of her compensation ordered, he can recover only at the reduced rate.—*November* 25, 1871, Vol. 34, pp. 242–245 (B.); Clyde *v.* U. S., 5 Ct. of Cl. R., 137; Emery and Blake's case, 4 Ct. of Cl., 401.

242. The barge Thomas C. Durant was chartered at New York City, April 21, 1864, at the rate of fifty-five dollars per day. Subsequently the Quartermaster-General directed the quartermaster at New York to reduce the rates of barges, after a given date, to four dollars per ton per month, or else to discharge them. The owners of the Thomas C. Durant declined to accede to the reduction and asked the return of their barge, which was accordingly discharged August 27, 1864. On December 31 payment was made for the service of the barge from August 1 to 27 at the reduced rate. The owner signed the usual voucher, receipting for the money as "in full of the above account." He afterwards presented a claim for the difference between the sum received by him and the amount claimed to be due at the contract rate: *Held*, that the claim should be allowed; that the signing by claimant of the customary voucher or receipt, at the settlement of December 31, was not a waiver of his claim; that such a receipt is not of the

nature of a release, nor does such a settlement amount to a compromise.—*May* 6, 1871, Vol. 33, pp. 612–617. See also the case of the steamer Mystic, *May* 8, 1871; *Ibid.*, pp. 620–624; also, the case of the steamboat Columbia, *May* 3, 1872, Vol. 34, pp. 457–459. (B.)

243. Where a vessel was in Government employ under a charter-party which provided that the Government should pay a certain sum per day, the owners to keep the vessel in repair, the presumption is that the vessel was continuously in service until formally discharged therefrom. This presumption can be overcome only by an affirmative showing on the part of the Government that by some laches of the vessel's owner or by some distinct understanding had with him, the period of employment was shortened or interrupted. It is not for the owner to account for the whereabouts or doings of the vessel during each day of the term specified in the charter-party; nor can an inference unfavorable to the owner be drawn from the failure of the proper Government officials so to account.—*January* 31, 1883, Vol. 46, pp. 658–659. (U.)

244. Where a claimant who had been very seriously opposed to having his vessel go into Government service on any terms proposed to him, finally executed the charter-party deliberately and after full consideration, because he preferred to accept the terms of the contract, even to the assuming of the marine risk, rather than to have his vessel go into service by impressment: *Held*, that so soon as he accepted the terms of the contract by signing the charter-party, those terms became binding upon both parties, and that the United States was not liable for the value of the vessel which, while in service under said char-

ter-party, was lost in a violent storm off Galveston bar.—*February* 26, 1884, Vol. 48, pp. 427–430. (U.)

CHECKS.

See, also, Assignments, 64; Bonds, 107; Disbursing Officers, 429; Forgery, 500; Pensions, 990–991, 1003.

245. A duplicate check will not be issued to replace one appropriated by an absconding attorney, as in such case the original cannot be regarded as "lost."—*May* 17, 1869, Vol. 32, p. 241. (B.)

246. No check can properly be paid until indorsed by the payee, or by some one duly authorized to indorse it by power of attorney made after the issue of the check and in which it is fully described.—*May* 27, 1872, Vol. 34, p. 509. (B.)

247. A check drawn by a disbursing officer of the Government on the Assistant Treasurer at New York, and made payable to a soldier who subsequently dies, may properly be considered as "moneys" within the sense in which that word is used in section 4818, Revised Statutes. The money represented by such check should not, however, be covered into the Treasury to the credit of the appropriation "for support of the Soldiers' Home," until it shall have remained unclaimed for three years from and after the soldier's death. Meanwhile, it should be held subject to the claim of the deceased soldier's legal representatives.—*December* 11, 1877, Vol. 39, pp. 517–518 (U.)

248. A disbursing officer's check issued in favor of a decedent and forwarded for delivery to him, but

which failed to reach its destination until after decedent's death, is not, in any sense, "property" of the decedent; and should the check be marked cancelled and the disbursing officer's accounts settled, as if it had never been drawn, the rights of the legal representatives of decedent's estate (resting upon the original transaction and not upon the making of the check) would not be affected thereby.—*January* 30, 1878, Vol. 39, pp. 618–621; *May* 10, 1882, Vol. 45, p. 522. (U.)

249. A soldier-claimant died just prior to the signing of a paymaster's check for the amount certified by the accounting officers in claimant's favor: *Held*, that the check belongs to the deceased soldier's estate, and should be delivered to the administrator.—*January* 3 and 10, 1881, Vol. 43, pp. 457, 481–482. (U.)

250. Where checks were properly drawn and delivered by a pension agent, who, prior to their presentment for payment, withdrew his funds from the bank upon which they were drawn, so that when presented they went to protest: *Held*, that the expense of protest should be allowed to the claimants (the payees) and charged to account of the agent.—*March* 29, 1878, Vol. 40, pp. 89–90. (U.)

251. The money upon which a lost check or draft has been drawn should not be deemed an "unexpended balance" liable to be carried to the surplus fund under section 5 of the act of June 20, 1874, (18 Stat., 110.) If it has been properly drawn upon by the disbursing officer, section 306 of the Revised Statutes contemplates that it will continue to be held in trust for the payment of the check or draft.—*September* 2, 1881, Vol. 44, pp. 438–439. (U.)

CITIZENSHIP.

SEE, ALSO, SET-OFF, 1103–1104.

252. A British subject, resident in the State of Tennessee, declared his intention, in April, 1860, of becoming an American citizen, but did not take out his final papers until July, 1869. Certain quartermaster's stores belonging to him having been taken by the Army in October, 1862, he presented a claim therefor under the act of July 4, 1864, (section 300 A, Rev. Stat.): *Held*, that at the date the stores were taken he was not a "citizen" within the meaning of the act, and that, therefore, his claim could not be allowed.—*March* 23, 1874, Vol. 35, pp. 672–673. (B.)

CIVILIAN EMPLOYEES.

SEE DECEASED CIVILIAN EMPLOYEES, 383; DESERTERS, 412; INDIAN AGENTS, 614.

CLAIMS—CLAIMANTS.

SEE, ALSO, ACCOUNTING OFFICERS, 6, 9, 10; ACCOUNTS, 12; APPROPRIATIONS, 34, 36; ASSISTANT COMMISSARY, 70; ATTORNEYS, 74, 78, 84, 89, 90; BOUNTY, 175–176, 213, 215–216, 222–223, 226–227; CHARTER-PARTY, 242; CITIZENSHIP, 252; COMPTROLLER, 304, 306–307; DEPARTMENT PRACTICE, 390, 398, 400, 402–403, 406, 410; DESERTERS, 411, 422; DISBURSING OFFICERS, 427, 439; EXECUTORS AND ADMINISTRATORS, 492–493; INDEBTEDNESS, 561–562; INDIAN AFFAIRS, 594–595; JURISDICTION, 642; PAY AND ALLOWANCES, 751, 767; SET-OFF, 1103–1104; SOLDIERS' HOME, 1115.

253. Claims for damages cannot ordinarily be entertained by the accounting officers; but repairs of

injuries that are not torts, the ascertainment of which is, in terms or by implication, provided for in contracts, may properly be liquidated and settled as a legitimate part of a claim within the meaning of the act of March 3, 1817, (3 Stat., 366,) providing for the settlement of accounts in the Treasury Department.—*February* 10, 1869, Vol. 32, pp. 81–82 (B.); *February* 26, 1883, Vol. 47, pp. 21–23. (U.)

254. Where, in 1862, property (horses) of a disloyal citizen of Kentucky was seized in execution by the sheriff of Harrison County and, pending the sale thereof, left in possession of the judgment debtor and, while thus in his possession, captured by the United States troops: *Held*, that a claim by the sheriff against the Government for the value of the property could not be sustained.—*April* 12, 1869, Vol. 32, pp. 173–175. (B.)

255. The accounting officers are precluded by law from allowing a claim for the reimbursement of one who was a surgeon in the Confederate service, for moneys expended by him from his private funds in the purchase of medical supplies for the use and benefit of Union prisoners.—*August* 7, 1869, Vol. 32, p. 396. (B.)

256. A case closed by the accounting officers of the Treasury will not be reopened except upon written authority of the Secretary.—*February* 29, 1872, Vol. 34, p. 363 (B.); see, also, Vol. 45, pp. 662–663, *June* 21, 1882. (U.)

257. No person, at his own option, can create a legal claim against the United States by advancing his own private funds. No legal demand exists against the Government in such a case, nor is there even an equitable claim until it is shown that the expenditure

inured to the benefit of the United States.—*June* 12, 1872, Vol. 34, p. 558 (B.); *December* 24, 1877, Vol. 39, pp. 551–552; *March* 7, 1884, Vol. 48, pp. 471–472 (U.); sections 52 and 53 Digest of 1869.

258. The joint resolution of March 2, 1867, (14 Stat., 571, section 3480, Rev. Stat.,) forbidding the payment of claims of disloyalists that accrued prior to April 13, 1861, is still binding upon the executive officers of the Government, notwithstanding the decisions of the United States Supreme Court relative to the effect of a pardon or amnesty.—*June* 19, 1872, Vol. 34, pp. 572–575. (B.)

259. Early in the spring of 1861 certain United States troops occupied the posts of Forts Bliss, Quitman, Davis, and Stockton, in the State of Texas. That State rebelled against the United States, and the United States troops found themselves opposed by a rebel force greatly outnumbering them. An agreement was entered into between the United States commander and the rebels, under which the United States troops were to leave the State, *via* the coast, unmolested. There being no public transportation available, the United States quartermaster at San Antonio entered into a contract on March 6, 1861, with one George T. Howard, whereby the latter agreed to furnish ten large wagons to receive the baggage and supplies of the aforesaid garrisons and to transport the same to Indianola, on the Texan coast, for which service he was to be paid at the rate of five hundred dollars per wagon. Claimant entered upon the service as per agreement, but was prevented from transporting the supplies beyond San Antonio, at which point the march of the troops was, on April 23, 1861, interrupted, the troops taken prisoners and the arms

and public property seized by the rebels. The contractor afterwards entered the rebel service, and payment was refused to him on the ground of disloyalty. He died some time after the close of the war. There was no forfeiture of his claim during his lifetime, either by act of the Executive or by judgment of court. His heirs subsequently presented a claim for the contract value of his services: *Held*, that they were entitled to be paid *pro rata iteneus per acti*—the joint resolution of March 2, 1867, (section 3480, Rev. Stat.,) not being applicable, inasmuch as the claim accrued subsequent to April 13, 1861.—*January* 14, 1874, Vol. 35, pp. 561–566. (B.)

260. An officer of the Government whose compensation is derived solely from fees is within the prohibition of the law forbidding a Government employé from prosecuting claims against the United States.—*February* 21, 1874, Vol. 35, p. 631. (B.)

261. A claim, dormant for twenty-three years, was finally paid, by mistake, to the wrong party: *Held*, that it should not be repaid to the rightful claimant.—*April* 10, 1874, Vol. 36, pp. 4–5. (B.)

262. A claim for value of private property of an officer, lost in consequence of the wreck of a Government transport upon which the same had been placed for transportation, August 11, 1862, at Harrison's Landing, Va., disallowed. In such cases the Government, as carrier, does not become an insurer, and the act of March 3, 1849, is not applicable.—*February* 15, 1875, Vol. 36, p. 447. (B.)

263. Where it appears that a claimant has failed to assert his alleged rights within a reasonable time, and the accounting officers, before assertion thereof and without knowledge of such rights or of facts sufficient

to put them upon inquiry, have, upon proper and sufficient evidence, allowed a claim for the same balance to a more remote heir or other person having color of right, the second claim cannot be allowed.—*December* 12, 22, 30, 1879, and *May* 28, 1880, Vol. 42, pp. 174–178, 202–205, 223–226, 657–659, 659–662; *July* 13, 1881, Vol. 44, p. 278; *May* 5, 1884, Vol. 48, pp. 675–676. (U.) See, also, Vol. 36, pp. 377–378, *December* 24, 1874. (B.)

264. The husband of a claimant under the act of July 4, 1864, (13 Stat., 381, sections 300 A and B, Rev. Stat.,) had made a deed of trust of all his property to secure the payment of his debts; residue, if any, to remain to his wife and children for their maintenance and support. The wife continued to occupy a farm, part of the trust estate, managing the same herself and supporting the children. The property taken by the Army and for which compensation is claimed was part of the crops raised by her upon this farm. The trustee by sale of a portion of the trust estate (not including the farm) paid all the debts against the estate, settled his accounts with the proper court, but still held title to the unsold property: *Held*, that the active trust having been accomplished, the legal title and the beneficial interest had fallen into the condition of a simple or dry trust, and that the amount allowed should be paid to the wife and not to the trustee.—*September* 1, 1875, Vol. 37, pp. 89–90. (B.)

265. Where single vouchers have been issued by military officers for property purchased for the use of the Army of the United States, in States or parts of States not in rebellion, the claim should be acted upon by the Quartermaster-General, under the provisions

of the act of July 4, 1864.—*February* 28, 1876, Vol. 37, pp. 487–488. (B.)

266. Claims that have been received, examined and considered by the accounting officers and reported by the Secretary of the Treasury to Congress, pursuant to section 4 of the act of June 14, 1878, (20 Stat., 130,) are not thereby finally decided in such sense as to bar a reconsideration thereof under the provisions of the act of March 30, 1868, (section 191, Rev. Stat.) Nor does the fortuitous circumstance that the incumbents in the offices of Secretary and Comptroller have changed during the progress of the settlement have such effect as to render an interlocutory decision final. Nor does an appropriation by Congress for such a claim, on an account stated, convert it into an award to be attacked only for fraud. It continues to be a mere claim, and the power of the accounting officers over it is not exhausted until the last step in the process of settlement provided by the act of 1868 is taken.—*July* 14, 1876, Vol. 38, pp. 184–185. (C.)

267. The fact that a claim is one of old standing is not an absolute bar to its payment. Lapse of time, while it furnishes presumptive evidence against the justice of a claim, will not prevent its allowance; the delay may be accounted for. But in claims that have long lain dormant, the proofs must be clear, and must be supported by the official records of the period.—*August* 8, 1877, Vol. 39, pp. 285–286 (C.); 2 Opin., 464.

268. Claims due minor heirs can be paid only to a guardian.—*December* 13, 1877, Vol. 39, p. 526; *March* 20, 1882, Vol. 45, p. 348. (U.)

269. Claims arising from the capture, destruction, or abandonment of property under section 2 of the act of March 3, 1849, (section 3483, Rev. Stat.,) may be allowed by the accounting officers, and paid out of the permanent specific appropriation made by section 3689, Rev. Stat The act of June 20, 1874, (18 Stat., 110,) in relation to covering in balances, does not operate to prevent the payment of claims of this class.—*April* 22, 1878, Vol. 40, pp. 144–149. (U.)

270. A private soldier, in 1873, performed certain extra duty as a mechanic, and received from an acting assistant quartermaster, in July, 1873, a certified account for forty-nine dollars and eighty-five cents. K., a post-trader, thereupon advanced the soldier the money upon said certificate and took from him the certificate and a receipt, of date of July, 1873, "in full of the above account." The soldier deserted August 15, 1873. Subsequently K. filed a claim for the said amount, presenting as a voucher the said certified account, with the soldier's receipt appended: *Held*, that even under a liberal construction of the act of February 26, 1853, (section 3477, Rev. Stat.,) the claim could not be allowed; that K. took the soldier's place as payee, with notice that he was buying what might become forfeited by the desertion of his assignor.—*May* 1, 1878, Vol. 40, pp. 167–168. (U.)

271. A claimant, describing himself in his papers as "Alexander Anderson, of Augusta County, Virginia," filed a claim before the Commissioners of Claims, in 1871, for one hundred and seventy-five dollars, which was allowed and reported to Congress for appropriation. The act of March 3, 1873, providing for claims of this class, (17 Stat., 757,) appropriated a specific sum of money to pay each claim, one of

its appropriations being as follows: "To Alexander Anderson, of the State of Virginia, one hundred and seventy-five dollars." Another claimant, who described himself in his papers as "Alexander Anderson, of Amelia County, Virginia," had also filed a claim, but for a different sum; his claim, however, having been rejected by the Commissioners, was not appropriated for by Congress. Subsequently the accounting officers, in auditing the various claims that had been appropriated for, included twenty of them in one certificate, specifying the balance due to each; and in this certificate allowed one hundred and seventy-five dollars to the claimant first above mentioned, designating him as "Alexander Anderson of Virginia." The aggregate amount of the claims included in this certificate was five thousand and fifteen dollars and ninety cents, and it was therein directed that payment should be made to one Fant, as attorney-in-fact of the several claimants. Afterwards, to wit, on March 25, 1873, payment of the aggregate amount was made to Fant, who presented a power of attorney executed by Alexander Anderson of Amelia County, but who had no authority to act for the real party in interest in whose favor the appropriation had been made. Subsequently, the Alexander Anderson of Augusta County, who had had no notice of the proceedings of the accounting officers or of the action of Fant, appeared and demanded payment of the money appropriated in satisfaction of his claim: *Held*, that nothing appearing in the case to indicate that the erroneous payment was made through any fault on his part, or that he was chargeable with a lack of ordinary diligence, he still had a vested right to the sum appropriated, which he was not estopped from asserting: *Held, further*, that

the process denominated an "appropriation warrant" took no money out of the Treasury; that the entering of all these specific appropriations on the books of the Treasury Department, under the head of "Appropriations for claims for loyal citizens for supplies furnished during the rebellion," as if Congress had appropriated one aggregate sum for the payment of all these claims collectively, did not change the specific character of the appropriation made for the payment of this particular claim; that the erroneous payment made was not based upon the appropriation warrant, but upon a requisition subsequently issued; that if the payment made to the attorney-in-fact of a party having no colorable claim upon this appropriation results in ultimate loss, the loss must fall upon the general Treasury and not upon the specific appropriation; and that, therefore, it was not necessary to report the claim again to Congress for appropriation.—*January* 10, 1878, Vol. 39, pp. 578–582. (U.)

272. Where there is no doubt as to the identity of the party, a slight discrepancy between the claimant's name, as given in the certificate of the accounting officers, and the signature of the claimant to the final voucher, may be disregarded. Case of "Tilphey" or "Gilphey" or "Zilpha" Dean.—*June* 4, 1878, Vol. 40, p. 239. (U.)

273. While precedents are of great weight when they tend to solve a doubt as to the construction of a law, yet if no law can be found which, under any construction, will authorize payment of a claim, one or more isolated instances of the payment of similar claims will not prove a custom or establish the existence of a law.—*June* 24, 1878, Vol. 40, p. 299. (U.)

274. The fact that in a given case a "final statement" has not been obtained is not deemed sufficient

to justify disallowance by the accounting officers of any claim which upon examination may appear to be just.—*September* 6, 1878, Vol. 40, p. 466. (U.)

275. If previous to the time for covering in "unexpended balances" of appropriations, as required by section 5 of the act of June 20, 1874, (18 Stat., 110,) certificates have been issued by the accounting officers, by which claims upon these appropriations have been definitely determined, and the parties in favor of whom they have been issued are entitled to their money, such claims may thereafter properly be paid by the disbursing officers.—*September* 10, 1878, Vol. 40, p. 479 (U.); 15 Opin., 357.

276. A claimant having become insane, payment was refused to his wife, the amount of the allowance exceeding one hundred dollars.—*February* 10, 1879, Vol. 41, pp. 110–111. (U.)

277. A claimant who, without objection and with knowledge of the principle upon which the adjustment has been made, accepts the balance found by the proper Government officer to be due him, cannot, long afterward, complain of an error of law occurring in the adjustment.—*July* 5, 1879, Vol. 41, p. 547; *November* 28, 1882, Vol. 46, pp. 469–470; *February* 21, 1883, Vol. 47, p. 55 (U.); Baird *v.* U. S., 6 Otto, 430.

278. A claimant, on being denied payment by a disbursing officer, has the right to present his claim to the Auditor for settlement; or, at the claimant's request, the disbursing officer may so present it; and, as a general rule, the latter course is the most convenient and expeditious. When a case is thus presented, and a balance ascertained by the accounting officers and certified to the head of the proper Department, the certificate may be transmitted by him to the

disbursing officer as a conclusive decision.—*October* 2, 1879, Vol. 42, p. 45. (U.)

279. The relations of the State of Tennessee to the Union and the mutual relations of the State and the United States were the same during the military governorship of Andrew Johnson as they were before and have been since; and where it appeared that the United States committed military convicts to the State's prison, and such prisoners were there maintained by State taxes assessed by the State legislature and collected and applied under the authority of the military governor: *Held*, that under the special act of January 13, 1879, (20 Stat., 260,) the State was entitled to reimbursement.—*September* 26, 1879, Vol. 42, p. 38; *June* 12, 1879, Vol. 44, p 504–507. (U.)

280. H., a registering officer at large for Russell County, Virginia, appointed under the act of March 23, 1867, (15 Stat., 2,) applied for final payment near the end of October, 1867, when he presented and surrendered certain vouchers to the paymaster whose duty it was to pay them. Among these vouchers were three drawn in his own favor. The paymaster filed the vouchers with his reconstruction accounts, as evidence of disbursements for which he claimed and received credit in the adjustment of his accounts. Subsequently H. presented a claim to the Secretary of War (who referred it to the Second Auditor) for the amount of two of the three vouchers and a balance due on a third, alleging that though he had surrendered the vouchers to the paymaster they were only partially paid, because of a deficiency of reconstruction funds, and that he had received a statement, (since destroyed by fire,) signed by the

paymaster, showing that the sums claimed by him were due and unpaid: *Held*, that the circumstances indicated an intention on the part of H. to look to the paymaster alone for payment and to permit him to have the benefit of the vouchers in his settlement with the Government; and that by giving up the vouchers and, without protest, allowing the paymaster to retain and take credit for them, H. had waived his right to recover from the United States.—*March* 26, 1880, Vol. 42, pp. 510–512; *April* 26, 1882, Vol. 45, pp. 471–474; *May* 4, 1883, Vol. 47, pp. 253–258. (U.)

281. The filing in the office of the Quartermaster-General of a power of attorney to prosecute a claim against the United States, under the act of July 4, 1864, (section 300 A, Rev. Stat.,) is not such a presenting and filing of a claim as to prevent its being barred by the act of March 3, 1879, (20 Stat., 650, section 3.) Nor can the filing of a claim against a State with the proper State officers, under a law of that State, be construed as a legal presenting and filing, under said act of July 4, 1864, in the sense of the limitation act of 1879.—*October* 17, 1881, Vol. 44, pp. 552–553. (U.)

282. Claimant served as a paymaster, United States Army, from 1861 to 1867, and afterwards as an Indian agent from 1870 to 1873. Upon the settlement of his accounts as an Indian agent there was found due him a balance of one thousand seven hundred and ninety-four dollars and thirty-five cents, and upon examination of his accounts as paymaster a balance was certified against him of five thousand five hundred and sixty-one dollars and forty-four cents. Payment of the one thousand seven hundred and ninety-

four dollars and thirty-five cents was suspended and refused, and an action was begun against the claimant, on his account as paymaster, by the United States. In place of suing for the five thousand five hundred and sixty-one dollars and forty-four cents, leaving the set-off to be claimed by the defendant, the suit was for three thousand seven hundred and sixty-seven dollars and nine cents, the difference between the two certified balances above mentioned. The authority of the accounting officers for so consolidating the two accounts in one settlement is not clear. Because of this mode of proceeding, the litigation seems to include a matter of set-off, although the defendant did not plead set-off or counterclaim, the only plea being a formal answer to the effect that the defendant fulfilled the condition of his bond as paymaster. Upon trial of the issue thus presented, the jury found for the defendant, and certified that the United States was indebted to the defendant in the sum of seven hundred and nineteen dollars and thirty-two cents. The court rendered judgment that the plaintiff take nothing, but refused to enter judgment for the defendant, on the theory that the court had no jurisdiction of any claim against the United States except so far as to decide whether or not the defendant's claim could be credited or set-off against a claim for money due the United States. Because of this limit of jurisdiction, so much of the language of the verdict as purports to find the United States indebted to the defendant is *ultra vires* and without authority as an award or decision. But, since the defendant did not plead a counterclaim or set-off, since he did not voluntarily bring his account as an Indian agent into the litigation, and since from the record of the case, without regard to the part of the verdict of the jury that is *ultra vires*, the amount

of the one thousand seven hundred and ninety-four dollars and thirty-five cents which remained after satisfying any balance due to the United States from the defendant as paymaster can be ascertained to a certainty: *Held*, that the account should be restated on the basis that there is still a balance (seven hundred and nineteen dollars and thirty-two cents) due the defendant on his account as Indian agent.—*April* 24, 1882, Vol. 45, pp. 463–466; *June* 24, 1882, *Ibid.*, pp. 671–673. (U.)

283. A soldier who, under paragraph 123 of the Army Regulations of 1863, had been relieved from ordinary military duty, to make, alter, and mend soldiers' clothing, &c., applied for payment of his claims against certain soldiers who had died and others who had deserted: *Held*, that the accounting officers have authority to entertain and allow such claims to an amount not exceeding in any case the amount due from the United States to the decedent or deserter. But this is not to be understood as sanctioning the practice under which the amount due the tailor from the soldier is sometimes advanced by the paymaster to the tailor, and then charged against the soldier on his company roll as due from him to the United States.—*February* 23, 1882, Vol. 45, p. 253. (U.)

284. A claimant brought an action in the Court of Claims for the recovery of certain amounts alleged to be due him, and, by reason of the fact that the United States pleaded the statute of limitations, (section 1069, Rev. Stat.,) he recovered judgment for a part only of his original demand. He thereupon filed a claim with the Second Auditor for that part of his demand for which he failed to obtain judgment, alleging that after the statute of limitations was pleaded he amended his petition, by leave of court, and struck out that por-

tion of his demand which was barred by the statute: *Held*, that the course thus pursued placed him in no better attitude than he would have occupied had he gone to trial on his original petition; and that, as he had elected to resort to the Court of Claims for the enforcement of his demand and had received its decision, he was not entitled to recover through the accounting officers anything which he could not obtain in that court.—*December* 4, 1882, Vol. 46, pp. 483–484. (U.)

285. The Twenty-seventh and Seventy-fifth Missouri Militia were State organizations and were never recognized by the War Department as organized under authority of that Department. Claims for services in these organizations must be audited by the State of Missouri, as there is no authority of law for their consideration by the Treasury Department.—*May* 11, 1883, Vol. 47, pp. 288–289. (U.)

286. In claims of small amounts, where it seems clear that the money will reach the real party in interest, it is the custom of the accounting officers to state balances in favor of widows and heirs, without requiring letters of administration; and in favor of the relatives of infants and of insane persons, without the appointment of a guardian or committee. Payments may also be made, in cases of small amounts, to reputed agents, where the principal was so situated as to make payment to the principal an inconvenience disproportionate to the risk incurred. One hundred dollars has been declared the limit in connection with this indulgence.—*July* 18, 1883, Vol. 47, pp. 461–464. (U.)

287. A claim, arising under the act of July 4, 1864, (Rev. Stat., sections 300 A and 300 B,) was filed in the Quartermaster-General's office December 31, 1879.

The same claim, substantially, had previously been filed in the House of Representatives, United States Congress, and referred to committee; but, although no action had been taken by the committee or the House on the merits of the claim, the House had not discharged itself or its committee from further consideration thereof: *Held*, that although the Congress had expired, the papers continued in the control of the next Congress, and that any proceedings in the Executive Departments would be improper until Congress should discharge its committee or grant to claimant leave to withdraw the papers. At the next Congress leave to withdraw the case was given; whereupon it was considered proper to proceed to the consideration and decision of the claim.—*January* 24, 1884, Vol. 48, pp. 315–316. (U.)

CLAIM AGENTS.

See Agents, 21; Attorneys, 72–74, 77–78; Forgery, 500; Powers of Attorney, 1028, 1033; Soldiers' Discharges, 1110.

CLERKS.

See, also, Appropriations, 29; Compensation, 296; Eight-hour Law, 450; Extra Compensation, 491; Indian Affairs, 585; Mileage, 687, 695; Pay and Allowances, 843, 848–850, 860, 862, 895, 902, 953; Paymasters, 969; Quartermasters, 1045; Transportation, 1153; Traveling Expenses, 1181–1183; Witnesses, 1207.

288. Female clerks employed at any agency for the payment of pensions, who have been regularly

appointed and specifically designated pursuant to section 6 of the act of July 8, 1870, (16 Stat., 194,) are legally qualified and empowered to administer oaths on pension vouchers.—*August* 18, 1870, Vol. 33, p. 231. (B.)

289. A clerk in the Interior Department was appointed a special agent by the Secretary of the Interior, and, accepting the position, entered upon the discharge of its duties: *Held*, that he thereby vacated his clerkship.—*January* 19, 1881, Vol. 43, pp. 514–519. (U.)

CLOTHING.

SEE, ALSO, BOUNTY, 119; CONSTRUCTION OF STATUTES, 309; PAY AND ALLOWANCES, 835; SALES, 1094; SET-OFF, 1105; SOLDIERS' DISCHARGES, 1111.

290. Evidence must appear on the muster rolls to authorize payment of commutation of clothing. (See Army Regulations of 1861, paragraphs 1152, 1155, 1160, and 1336; section 483 of Digest of 1869.)—*December* 8, 1877, Vol. 39, p. 505. (U.)

291. Where, however, but a small amount of clothing has been drawn, and sufficient data for a full settlement do not exist, the rule does not require that the amount so drawn shall be stopped from the pay of the soldier unless it be clearly in excess of the amount to which he would be entitled by law.—*Ibid.* (U.)

292. By a special order of the Secretary of War, based on an official report of a board of survey made in accordance with paragraph 55, page 515, of the Army Regulations of 1863, a gratuitous issue of clothing may be made, in a case of actual necessity, in lieu

of clothing lost without fault of the men.—*December* 10, 1877, Vol. 39, pp. 513–514, 518–521. (U.)

293. Under the provisions of section 1144, Rev. Stat., articles designated by the inspectors-general of the Army, and essential to the cleanliness or health of the soldier, may be sold to a recruit on credit, notwithstanding his clothing allowance may be overdrawn at the time of the sale.—*January* 27, 1882, Vol. 45, pp. 161–163. (U.)

COLORED SOLDIERS.

See, also, Accounting Officers, 9; Bounty, 139, 142, 159, 197.

294. The rights of "wives," so called, of colored soldiers and the rights of their children as heirs of such soldiers are not to be determined, under the law, by the same test. Children may be recognized as heirs, whose mother, if living, might not be recognized as the widow of a colored soldier. Section 2037, Rev. Stat., makes cohabitation or association as husband and wife sufficient proof of marriage, and requires that the children born of any such marriage shall be taken to be children of the soldier "whether such marriage was or was not dissolved at the time of the enlistment"; and the dissolution mentioned is not a dissolution of any particular kind. It can make no difference whether it was voluntary or involuntary, by death, by act of the parties through fault of either or both, or by the act of their masters. Therefore, where a colored soldier had cohabited, while a slave, with one woman from 1850 to 1860, by whom he had three children who filed an application for arrears of pay and bounty,

and with another woman from 1860 to date of enlistment, by whom he had one child, whose whereabouts was unknown: *Held*, (both women being dead,) that the three children were entitled to but three-fourths of the arrears of pay and bounty found due, and that the remaining one-fourth should be retained to await an application by the child of the second marriage.—*April* 3, 1879, Vol. 41, pp. 286–289. (U.)

COMMISSARY.

See Assistant Commissary.

COMMISSARY SUPPLIES.

See Comptroller, 307; Loyalty, 677; Vouchers, 1198.

COMMON CARRIER.

See Vessels, lost or destroyed, 1193–1194.

COMMUTATION.

Of Forage, see Forage; of Fuel and Quarters, see Fuel and Quarters; of Rations, see Rations; of Subsistence, see Subsistence. See, also, Artificial Limbs, 57, 59; Transportation, 1158.

COMPANY ROLL.

See Accountability, 2; Bounty, 150; Courts-Martial, 378; Deserters, 421; Laundrymen, 666.

COMPENSATION—REMUNERATION.

See, also, Appropriations, 29, 49; Assistant Commissary, 65–69; Construction of Statutes, 310; Contracts, 351, 354–355, 365; Indian Affairs, 583; Pension Agents, 1013; Set-off, 1103.

295. The word "compensation," as used in the act of January 25, 1828, forbidding payments to persons in arrears to the United States, (4 Stat., 246, section 1766, Rev. Stat.,) includes allowances as well as pay proper.—*June* 29, 1870, Vol. 33, p. 190; *May* 4, 1875, Vol. 36, pp. 583–584. (B.)

296. A Government employé is not entitled to compensation (per diem) while on leave of absence.—*March* 15, 1881, Vol. 43, p. 639. (U.)

297. By special order issuing from the War Department, a clerk in the General Land Office was appointed one of five members of a board of inspectors to inspect, from time to time, the Government general hospitals and military prisons in the Department of Washington. He employed other persons, at his own expense, to perform his duties in the Land Office during the four months that he served as a member of the board, and afterwards presented a claim for reimbursement for said clerk hire, as "expenses incurred by him as a member of said board." As a general rule, a person who holds two offices may receive the salary for each. (See 15 Opin., 306; 16

Opin., 7.) Claimant, as a clerk in the Land Office, with a salary fixed by law, was clearly an officer of the United States; but, in the capacity of a member of the aforesaid board of inspectors, he was not such an officer. No such office had been established by law, nor had Congress vested the appointment of such an officer in the President alone, in any court of law, or in the head of any department. (Constitution, article 11, section 2; U. S. *v.* Germaine, 9 Otto, 508.) The claimant, therefore, being an officer, as a clerk, but not being an officer, as a member of the board, allowance of his claim is prohibited by section 2 of the act of August 23, 1842, (section 1765, Rev. Stat.,) and by section 25 of the act of August 26, 1842, (section 361, Rev. Stat.)—*January* 4, 1882, Vol. 45, pp. 71–74. (U.)

298. The Board of Indian Commissioners appointed W. as its secretary, October 13, 1881, (see section 2040, Rev. Stat.,) and designated $2,500 per annum as his reasonable compensation. The appropriations previously made "For the expenses of the Board" had been made in gross, without specification as to what amount thereof might be used for any particular purpose; but they were all expended prior to the said appointment, and no appropriation for the purpose existed from July 1, 1881, to May 17, 1882, when an appropriation was made to meet the current expenses of the year ending June 30, 1883. Another act was passed August 5, 1882, to pay the current expenses of the year ending June 30, 1882; but each of these two acts appropriated $2,000 per annum for the salary of the secretary. W. now claims $500 a year additional, he having been in continuous service since appointment: *Held*, that the Board of Commissioners

had only power to designate a compensation "payable from moneys appropriated to the expenses of the Board"; and, hence, that the action of the Board did not vest in the appointee a right which would justify the accounting officers in making an allowance over and above the amount appropriated.—*February* 2, 1883, Vol. 46, pp. 669–670; *February* 24, 1883, Vol. 47, pp. 67–69. (U.)

COMPROMISE.

See Charter-Party, 242.

299. A compromise, under section 3469, Rev. Stat., between the Government and all the parties to the official bond of an Indian agent would include a counterclaim asserted by the agent against the Government; but a compromise with the sureties alone would not embrace the counterclaim of the principal.—*June* 28, 1883, Vol. 47, pp. 415–416. (U.)

COMPTROLLER.

See, also, Accounting Officers, 10; Accounts, 12, 16; Department Practice, 385, 388–389, 391, 398; Jurisdiction, 630, 651, 660, 665.

300. A decision of the Second Comptroller, in a case which he has jurisdiction to decide, is conclusive upon the executive branch of the Government and cannot be disregarded because of mere error of law. See section 191, Rev. Stat.; 15 Wend., 262; 32 N.

Y., 281.—*January* 19, 1881, Vol. 43, pp. 514–517; *February* 9, 1884, Vol. 48, pp. 408–409. (U.)

301. Such decision is conclusive until reversed by Congress or in court, even though the Comptroller erred as to the law, or mistook the facts, or misjudged as to the weight of evidence. Section 191, Rev. Stat., 5 John, 128; 6 Hill, 114; 4 Kernon, 329; 4 Seld., 137; 32 N. Y., 281.—*Ibid.* (U.)

302. Where a balance has been duly certified by the Second Comptroller, the subsequent duty of de termining whether a warrant shall issue or shall be countersigned, is neither appellate nor supervisory.* *January* 19, 1881, Vol. 43, p. 517. (U.)

303. When in the opinion of the Second Comptroller, further delay in the settlement of an account would be injurious to the United States, a request made to the Auditor, before whom the account is pend ing, to report a settlement is sanctioned by the opin ion of Attorney-General Butler. (2 Opin., 625.)—*February* 1, 1881, Vol. 43, p. 541. (U.)

304. By section 27, Rev. Stat., every account or claim that can properly come before the Auditor for examination is to be transmitted to the Comptroller for decision, and the Comptroller's duty in regard to an account thus certified to him is not concluded until the balance is certified to the Secretary of the Depart-

*The duty of countersigning a warrant for the payment of a duly certified balance bears a relation to the settling and certifying of such balance very similar to the relation between the issuance of an execution and the rendition of a judgment. Unless a clerk of a court can properly review a judgment for error, when called upon to issue execution, an officer who is called upon to countersign a warrant cannot open the settlement and re-examine the evidence or review the questions of law that have been passed upon. In the one case, a judgment of a court having jurisdiction is warrant of law for issuing final process, and in the other, a decision of a Comptroller or Commissioner of Customs, having jurisdiction, is warrant of law for countersigning a warrant for payment of the balance certified.

ment in which the expense was incurred.—*December* 19, 1883, Vol. 48, pp. 329–330. (U.)

305. If the Secretary of the Department in which the expense was incurred returns an account or claim to the Comptroller, in pursuance of section 191, Rev. Stat., before the warrant is issued for payment of the balance, it is the duty of the Comptroller to reconsider his decision.—*Ibid.* 332. (U.)

306. The practice of the Second Comptroller's office, in claims for the use or occupancy of real estate, is based on the conclusion that Congress has not delegated to the Auditor and Comptroller the authority to examine and settle claims of this class not based upon contract.—*December* 7, 1883, Vol. 48, pp. 171–175. (U.)

307. The act of July 4, 1864, relative to the mode of settling claims for quartermaster's and commissary stores, and the act of February 21, 1867, touching the construction of the former act, do not in any manner add to or detract from the jurisdiction previously conferred on the Auditor and Comptroller, in the settlement of claims for the use or occupancy of real estate. Their jurisdiction in claims for the use of real estate is derived exclusively from the acts embodied in sections 273 and 277, Rev. Stats.*—*Ibid.* p. 175. (U.)

*In Elgin *v.* The Second Comptroller, the petitioner applied to the supreme court of the District of Columbia for a writ of mandamus to compel the auditing of a claim for the use by the Army of certain real estate in Maryland during the war of the rebellion. The original petition for mandamus did not allege that the premises were taken or held under contract, but alleged that the taking and holding were "without the consent of the petitioner." A peremptory mandamus was granted, but upon suggestion that no contract was averred, the court, upon its own motion, directed a reargument. Thereupon, the petitioner amended his petition, averring that there was an implied contract for the payment of rent. The court then denied the writ on the ground that it was not shown in the petition for mandamus that a claim based upon contract, express or implied, had been presented to the accounting officers.

COMPUTATION OF TIME.

See Time.

CONGRESS—CONGRESSIONAL COMMITTEES.

See Accounting Officers, 7; Claims, 287; Department Practice, 396–397, 402; Jurisdiction, 634.

CONSTRUCTION OF STATUTES.

See, also, Appropriations, 38; Forage, 497; Horses, 552; Pay and Allowances, 747, 795, 893–894.

308. The amendment made by the joint resolution of March 3, 1871, (16 Stat., 600,) to the joint resolution of December 23, 1869, by the addition of the words "or in conformity with the laws of the United States," embraces the case of a vessel that was lawfully in an insurrectionary district when the rebellion began and was unable to escape.—*May* 11, 1877, Vol. 39, p. 56. (C.)

309. Joint resolution No. 10, of March 3, 1877, (19 Stat., 554,) only authorizes gratuitous issue of clothing in kind to certain enlisted men of Company A, Second United States Cavalry, and cannot be construed to authorize the payment of money in lieu of clothing.—*August* 11, 1877, Vol. 39, p. 298 (C.); *March* 3, 1879, Vol. 41, pp. 177–178; *January* 26, 1881, Vol. 43, p. 529. (U.)

310. Where the words of a statute fixing the compensation of a public officer are loose and obscure and admit of two interpretations, they should be construed in favor of the officer. (U. S. *v.* Morse, 3 Story C. C., 87.) Hence, where the Military Academy appropriation act of June 11, 1878, (20 Stat, 109,) appropriated "for pay of an adjutant, in addition to pay as first lieutenant, three hundred dollars: *Provided*, The sum paid to said officer shall not exceed one thousand eight hundred dollars per annum;" *Held*, that the words "sum paid" in the proviso must be construed to mean "pay" or "current yearly pay," and that the proviso does not operate to defeat the right of the incumbent to the longevity increase provided for by section 1262, Rev. Stats.—*November* 30, 1878, Vol. 40, pp. 655–657. (U.)

311. The proviso in the Army appropriation act of June 23, 1879, (21 Stat., 30,) forbidding commutation to officers for servants' quarters and fixing the rate of commutation for officers' quarters at twelve dollars per room per month; section 3 of that act, authorizing increased pay, emoluments, and allowances to the examiner of State claims in the office of the Secretary of War, and section 4, amending section 1336, Rev. Stat., severally took effect at the date of the approval of the act.—*June* 28, 1879, Vol. 41, pp. 528–530. (U.)

312. Section 1547 Rev. Stat., which gives Congressional sanction to the Navy Regulations, does not purport to construe the Regulations or in any manner change their meaning, nor does that section or section 5 of the act of July 14, 1862, (12 Stat., 565,) recognize them as anything other than Navy Regulations.—*February* 12, 1880, Vol. 42, pp. 351. (U.)

313. The 7th section of the act of June 18, 1878, relative to credits for longevity and retirement, (20 Stat., 150,) is not retroactive.—*June* 24, 1880, Vol. 43, p. 22. (U.)

314. The act of May 18, 1880, (20 Stat., 141,) and that part of the appropriation act of June 14, 1880, relating to tolls on the Louisville and Portland Canal, (20 Stat., 192,) must be construed together.—*July* 29, 1880, Vol. 43, pp. 112–113. (U.)

315. The first proviso in the Army appropriation act of February 24, 1881, allowing one hundred dollars per month for commutation of quarters to the Lieutenant-General of the Army, (21 Stat, 347,) took effect from the date of the approval of the act.—*May* 16, 1881, Vol., 44 pp. 112–113. (U.)

316. The object of the provision in the Navy appropriation act of March 3, 1883, (22 Stat., 472,) which makes appropriation for the payment of ninety-one midshipmen, and then provides that the title of midshipmen be changed to that of ensigns, was to effect a change of title and not to change or modify the rights, duties, or obligations of the ninety-one officers to whom this change applies.—*June* 18, 1883, Vol. 47, pp. 380–381. (U.)

CONSULAR OFFICERS.

See Wrecks, 1212.

CONTINGENCIES OF THE ARMY.

See Appropriations, 28-29.

CONTRACTS—CONTRACTORS.

SEE, ALSO, ACCOUNTING OFFICERS, 11; ACCOUNTS, 14–15; AGENTS, 22; ATTORNEYS, 85–87, 89; BILLS OF LADING, 95; CHARTER-PARTY, 237; CLAIMS, 259; DAMAGES, 380–382; DISBURSING OFFICERS, 427, 435; INDIAN AFFAIRS, 580; JURISDICTION, 650, 655; PARTNERS, 737; PUBLIC EXIGENCY, 1043; RECONSIDERATION, 1081; TIME, 1141; TRANSPORTATION, 1161.

317. In cases where a contractor has not performed the work in strict conformity to the terms of the contract, but the Government has sustained no injury by the failure of specific performance, the amount reserved to insure specific fulfilment should be paid. Story on Contracts, p. 1125; Chitty on Contracts, p. 862; Parsons on Contracts, p. 156; 2 Story's Equity, p. 740.—*March* 18, 1869, Vol. 32, pp. 123–126. (B.)

318. No contract can legally be made by an officer of the United States that promises compensation for services which the law declares to have already been compensated for by a grant of land. Enactments of law cannot be nullified by a contract, nor is the Government bound by a contract made by an officer acting beyond the scope of his authority.—*March* 5, 1872, Vol. 34, p. 369 (B.); *December* 22, 1881, Vol. 45, pp. 46–47. (U.)

319. It is within the power and province of the Treasury Department to withhold from a contractor the amount due him on one contract to reimburse the United States for work imperfectly done, improperly inspected, and wrongfully paid for under other contracts.—*August* 26, 1873, Vol. 35, p. 437 (B.); *January* 20, 1883, Vol. 46, pp. 614–618; *July* 28, 1883, Vol. 47, p. 492. (U.)

320. Where a contract called for the dredging of a channel 400 feet long and "about one hundred

feet wide," but the contractor was required by the engineer in charge to dredge a channel two hundred feet in width, but raised no objection and entered no protest until he had dredged one hundred and fifty of the entire four hundred feet in length: *Held*, that he was entitled to increased remuneration only for the work done after notice to the engineer of his demand for extra compensation, and then only upon proof that the cost of dredging within the limit of two hundred feet was greater than within the limit of one hundred feet in width.—*November* 20, 1873, Vol. 35, pp. 501–504. (B.)

321. During the fiscal year ending June 30, 1873, certain contracts were entered into for the construction of walls and lodges of national cemeteries, and the money necessary to pay for the work was duly reserved from the appropriation for that year. The contractor, however, wholly failed to carry out his agreement: *Held*, that his failure to enter upon the work left the appropriation entirely unaffected, precisely as if no contract had been made; that therefore the restriction of section 5 of the act of July 12, 1870, (16 Stat., 251,) applied, and that the reserved fund could not be used to satisfy an indebtedness that might arise under a new contract made and executed in a subsequent fiscal year.—*April* 2, 1874, Vol. 35, p. 689. (B.)

322. The "contract existing" referred to in section 5 of the act of June 20, 1874, in regard to covering in unexpended balances, (18 Stat., 111,) must be construed to mean a written contract, in legal form, properly executed, in process of performance, but not yet completed by the fulfilment of its stipulations on the

part of the contracting parties.—*July* 14, 1874, Vol. 36, p. 147. (B.)

323. Where stumpage was illegally exacted from a contractor by the United States Indian agent at the Cheyenne agency: *Held*, (the money having been properly accounted for by the agent,) that the contractor's claim for reimbursement should be allowed.—*May* 23, 1876, Vol. 38, pp. 43–44, 100–102. (C.)

324. Where the specification and contract called for the dredging of fine, compact sand at forty-nine cents per cubic yard, and it was discovered, as the work progressed, that the material dredged was a mixture of stiff clay and sand, making the work of dredging much more difficult: *Held*, that an additional allowance to the contractor of seventy-five cents per cubic yard would be equitable and just; and that the fact that the contractor, under financial pressure, receipted vouchers for the work performed, as if for dredging sand, was no bar to the additional allowance.—*June* 6, 1876, Vol. 38, pp. 76–78. (C.)

325. T., while a commissioner of the circuit court, entered into a written contract with the Government. The contract contained a provision that "no member of Congress, officer, agent or employé of the Government should * * * derive any benefit to arise therefrom:" *Held*, that T. was not an agent, officer or employé of the Government within the sense and meaning of said provision.—*December* 27, 1876, Vol. 38, pp. 457–458. (C.)

326. Under a contract calling for soft wood for fuel at four dollars and eighty-nine cents per cord and "any merchantable oak wood, in lieu of cotton or soft wood, at eight dollars and fifty-five cents per cord," the contractor furnished a portion of cottonwood, and

portions of oak, elm, and ash. A board of officers accepted all the wood furnished; the cottonwood as soft wood, and the oak, elm, and ash as merchantable hard wood: *Held*, that the words "oak wood" were used in the contract in opposition to cotton or soft wood, and that as the wood was furnished for fuel only, any wood equally hard and serviceable for fuel as oak ought to be received and paid for as oak wood.—*December* 29, 1876, Vol. 38, pp. 460–462. (C.)

327. A contract calling for the delivery of hay, etc., "during the fiscal year commencing July 1, 1876, and terminating June 30, 1877, at such times and in such quantities as the depot quartermaster may direct," contained a provision as follows: "This agreement is made subject to the approval of the division and department commanders, and is non-effective until appropriation is made by Congress." The contract was dated May 15, 1876, and was approved by the department commander June 28, 1876, and by the division commander July 15, 1876. The appropriation was not made until July 24, 1876: *Held*, not to be within the scope of the decision of the court in the case of the United States *v.* Hill P. Wilson.*—*February* 21, 1877, Vol. 38, pp. 589–592. (C.)

328. The requirements of a contract calling for "beef cattle on the hoof," are not met by the delivery of frozen beef minus the hides, tallow, *etc.*, technically termed the "fifth quarter."—*May* 18, 1877, Vol. 39, pp. 79–81. (C.)

329. A detachment of United States troops was stationed at the Lower Brulé Indian Agency, in the interior

* In this case (not reported) the court held that where the required approval of the contract was given after the date at which the delivery was to have commenced, such failure to approve was fatal to the Government's right to recover.

of the Great Sioux Reservation. The chief quartermaster of the department of Dakota made a contract with one Armstrong, by which the latter agreed to supply the post with firewood in the fiscal year of 1875–'76, the Government engaging to furnish the standing timber. The wood was cut, delivered, and paid for, but the Indians and Indian agents at the agency claimed that the wood was cut upon the reservation, and demanded and compelled the payment by Armstrong of three hundred and ninety-two dollars as stumpage. This amount the Indian agents accounted for and paid into the United States Treasury. The contractor presented a claim for reimbursement: *Held*, that when troops are stationed on Indian reservations to protect Indians they have a right to use the timber in the vicinity for firewood and other necessary purposes of the camps; that the exaction of stumpage by the Indian agents was unauthorized by law, and that the claim for reimbursement should be allowed.—*June* 20 and *July* 18, 1877, Vol. 39, pp. 173–177, 220–221. (C.)

330. Where, upon failure of a contractor to make the daily progress required by his contract, a United States officer takes possession and charge of the work, the United States is not bound to complete the work within the period to which the contractor was limited by the terms of the contract. The contract, so far as it relates to the further progress and the completion of the work, is to be regarded as terminated and annulled, and the Government may complete the work either by a new letting and contract or (where the exigency of the case requires) by hired labor and purchase of materials. Should Congress fail, for an unreasonable length of time, to furnish means to com-

plete the work, it may be considered as abandoned, and a fair and equitable settlement may be come to with the contractor in the manner provided in the contract. If the contractor's plant, or any portion thereof, be taken and used by the Government, and lost or destroyed, a claim therefor may properly be allowed prior to the completion of the work, unless there is a provision in the contract that its value shall enter into the final settlement.—*July* 25, 1877, Vol. 39, pp. 237–240. (C.)

331. A contract entered into for the construction of a breakwater at Sand Beach, Lake Huron, contained the following provisions: "No deviation will be allowed from the plans furnished unless specially authorized," and "No claim or payment shall be made for anything not specifically provided for in the contract unless the same shall be expressly required in writing, quantities and price being first agreed upon and approved in writing by the Chief of Engineers." Various and important changes were made during the progress of the work, by order of the civil assistant of the United States engineer in charge, none of which, however, were directed by the engineer officer himself, or were first approved by the Chief of Engineers, but the work, when completed, was accepted by the Government: *Held*, first, that by the action of the Government, through its agent, the sureties of the contractor were released from liability; second, that the Government was liable to pay the contractor for the extra work and cost resulting from the changes made; third, that in estimating the value of the extra work, the terms of the contract, so far as applicable, would control the rates of compensation, and that for

the rest reasonable rates should be allowed.—*July* 27, 1877, Vol. 39, pp. 246–257. (C.)

332. A transportation contractor, by the payment of the price of stores which he has failed to deliver, or which through his own fault are delivered in a worthless condition, together with double freight on same from the place of purchase to the point at which received by him, does not become entitled to be paid for their transportation.—*December* 27, 1877, Vol. 39, p. 558. (U.)

333. V. having contracted to furnish wood by the cord, the Government stipulated that he should have "full and sufficient authority to cut wood on any part" of certain lands. He found desirable wood upon a portion of said lands, within easy distance of the place of delivery, but was prevented from obtaining it by certain Indians. As a consequence he was constrained to select a much more distant point from which to cut and haul the wood, and, therefore, claimed extra compensation: *Held*, that the stipulation on the part of the Government was a mere permit and not a guaranty that wood could be found at any particular point or any convenient place, or that impediments should not be thrown by strangers to the contract in the way of cutting it. The claim was, therefore, disallowed.—*March* 8, 1879, Vol. 40, pp. 30–31. (U.)

334. Article 10 of the printed forms of certain contracts in use, until recently, in the Quartermaster's Department, providing for the change, alteration, modification, &c., of the contract by mutual consent of the parties, may not be so construed as to authorize the acceptance of stores differing materially from those contracted for. In the case of a contract for beef cattle, in which it was provided that the cattle should

be of a certain weight, a modification to the effect that they need not be of the specified weight was such a change in the terms of the contract that the article proposed to be taken was not that for which bids were made and considered. Such attempted modification violates the spirit and the intent of the law, and is therefore void.—*May* 2, 1878, Vol. 40, pp. 169–173. In another case, an attempt made, under such provision of a contract, to substitute barley for corn, and at a higher rate, was held to be unlawful.—*July* 23, 1878, Vol. 40, pp. 366–367. (U.) And see section 357, *post*.

335. A contractor engaged to transport certain Government freight from Cheyenne to Fort Fetterman, one hundred and sixty miles, at three dollars per one hundred pounds for the whole distance; freight to be delivered within twenty-five days, and if not so delivered ten cents per one hundred pounds to be deducted for each day's delay over twenty-five days. He started on March 5, and carried the freight to Laramie River, a distance of eighty-five miles, where, on April 23, he abandoned the trip, being unable to proceed on account of severe snow-storms and bad roads. He asked to be allowed and paid pro rata for the distance he actually carried the stores: *Held*, that it was not in the power of the accounting officers to make any settlement that would be in violation of the terms of the contract; that Congress alone could grant relief in the premises.—*May* 8, 1878, Vol. 40, pp. 187–189. (U.)

336. In determining whether payments, under a given contract, may be made out of a certain annual appropriation, it is not the date of the contract that

governs, but the time when it was intended it should take effect —*June* 15, 1878, Vol. 40, pp. 274–277. (U.)

337. No objection will lie to payments made after the expiration of any given fiscal year, under contracts properly made within the year and not exceeding the appropriations of that year.—*June* 15, 1878, Vol. 40, p. 276. (U.)

338. Where a contract for the delivery of beef cattle stipulated that no animal should weigh less than seven hundred pounds, but provided, in case any were received weighing less than seven hundred pounds, that a Board of Survey should determine what deduction from the fixed price should be made because of the inferior cattle: *Held*, that the object of sealed proposals is that the price of articles to be received may be fixed at the time of making the contract, and the law will not permit the price to be subsequently fixed by arbitration; and that which cannot be done directly, by leaving the price to arbitration, cannot be done indirectly by leaving to arbitration what deduction shall be made from a fixed price because of failure to furnish what was contemplated at time of the proposals.—*July* 25, 1878, Vol. 40, pp. 384–387; See, also, Vol. 45, pp. 374–380, *March* 27, 1882. (U.)

339. Contracts themselves, and not copies thereof, must be deposited in this office.—*July* 29, 1878, Vol. 20, p. 391. (U.)

340. When, in default of the principal in a Government contract, his bondsmen undertake to proceed with the work under the original contract, and execute a power of attorney to a third party, such power is clearly within the restriction of section 3477, Rev Stat., and within the ruling of the United States Su-

preme Court in Spofford *v.* Kirk *et al.*, (7 Otto, 484,) and payment cannot lawfully be made to the attorney.—*November* 22, 1878, Vol. 40, pp. 641–643; *May* 22, 1882, Vol. 45, p. 552. (U.)

341. A transfer and assignment of his contract by a Government contractor to his creditors is prohibited by sections 3477 and 3737, Rev. Stats., as construed by the United States Supreme Court.—*July* 15, 1879, Vol. 41, pp. 567–569; *May* 22, 1882, Vol. 45, p. 552 (U.); 5 Otto, 407; 7 Otto, 484.

342. Positive requirements of an act of Congress may not be disregarded on the supposition that a departure therefrom will save money and thereby prove a public benefit. Purchasing ordnance supplies or entering into ordnance contracts without previously advertising, as required by section 3709, Rev. Stat., will be lawful only when a public exigency exists. Paragraphs 22 and 25 of section 3 of General Orders No. 10, Adjutant General's Office of 1879, are in harmony with the views of this office as to the true sense and meaning of the phrase "public exigency," and as to the character of a contract entered into without advertising in the absence of such exigency.—*April* 17, 1879, Vol. 41, pp. 332–335. (U.)

343. No relief can be afforded by the accounting officers for services performed, and charged for in excess of contract rates.—*May* 23, 1879, Vol. 41, p. 439. (U.)

344. Where a transportation contractor receives goods consigned to a point to which he has a through rate, it is his duty to deliver the freight at its destination and not turn it over to another freighter or contractor.—*November* 13, 1879, Vol. 42, p. 111. (U.)

345. In making a contract a printed form was used and some of the *printed* words (not applicable in that instance) were erased, but the erasure was not noticed before signature: *Held*, not to avoid the contract nor to invalidate the agreement in any respect. Unexplained interlineations or erasures may, however, put the party offering the contract in evidence to great inconvenience in producing witnesses and making explanations in court, and should be avoided.—*January* 2, 1880, Vol. 42, pp. 234–235. (U.)

346. It is not in the power of the executive branch of the Government to liquidate and pay damages which a contractor may sustain by reason of a violation of the contract on the part of the United States. If he has been damnified, Congress alone can redress the injury But where contracts have been suddenly terminated by the Government while in process of performance, it is lawful and is the uniform practice and policy to make a reasonable allowance for services actually rendered and for expenses incurred in a legitimate and *bona fide* endeavor to perform the contract Thus the contractor may charge for his own time and services, for the services of his employés, for expenditures on vessels, tools, &c., for his whole "plant," for loss on materials by adapting them to his particular work, for depreciation in the value of materials provided and for other similar expenses and losses.—*May* 8, 1880, Vol. 42, pp. 598–600. (U.)

347. The employment by a contractor of another to perform the contract for him, as his agent, is not unlawful; the Government officers, however, may not recognize the agent, but must deal only with the principal.—*November* 11, 1880, Vol. 43, p. 329; *March* 16 and *May* 22, 1882, Vol. 45, pp. 339–340, 553. (U.)

348. Z. authorized H. & Co. to put in a bid for him at two dollars and sixty cents. H. & Co. put in the bid at two dollars and six cents, which was accepted by the Government and a contract and bond prepared accordingly. The instruments were executed by Z.'s clerk, who had no special power to execute a sealed contract for his principal: *Held*, that said instruments were not binding upon Z., and that upon his failure to carry out the provisions of the contract there should be either a new letting under paragraph 1046 of the Army Regulations of 1863, or, if required by the exigency of the service, a purchase in open market under paragraph 1048; also, that a suit upon the bond could not be maintained.—*February* 14, 1881, Vol. 43, pp. 573–574. (U.)

349. An administrator of a deceased contractor, where the contract is of an executory nature and the administrator can fairly and sufficiently perform all that the deceased could have done, may perform and enforce the contract, and may be treated in every respect as the original contractor. His receipt for whatever amount may be due upon the contract will be good and sufficient.—*April* 5, 1881, Vol. 43, p. 688. (U.)

350. Payments to a Government contractor, in advance of the time named in the contract, should not be made, even though he offer additional guaranty that the money advanced shall be expended on the work. Such advance payment would be improper in itself and would probably release the sureties in the original bond.—*June* 15, 1881, Vol. 44, pp. 200–201; *November* 9, 1882, Vol. 46, pp. 409–410. (U.)

351. The claim of a Government contractor for compensation or payment under his contract to fur-

nish and deliver supplies, cannot be defeated by the failure of the United States to have the proper official present at the proper time and place to receive and receipt for the articles agreed to be furnished. Upon the establishment of the fact of a legal delivery, the right to compensation accrues.—*July* 16, 1881, Vol. 44, pp. 296–297; *February* 17, 1882, Vol. 45, pp. 241–242. (U)

352. A contract cannot be annulled as to the principal and remain in force as an executory contract, as to the sureties. Hence, where the principal gave formal notice that he had abandoned his contract, and no new contract was made with the sureties: *Held*, that the Government could not deal with the latter on any theory of their being entitled to receive money earned under the original contract *—*December* 6, 1881, Vol. 44, pp. 683–684; *February* 2 and *May* 22, 1882, Vol 45, pp. 190, 552. (U.)

353. Where contractors for the construction of public works are in default, the Government is entitled to so declare and to make a new contract. If, by reason of public exigency, there is not time for advertisement, such new contract can be made as an open market transaction.†—*February* 2, 1882, Vol. 45, p 190. (U.)

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* Overruling section 586 of the Digest of 1869.

† The present Comptroller is of the opinion that where a contractor is in default, and from insolvency or other cause is unable to proceed with his work, and his sureties desire, for their own protection, to complete the work on their own account, they must enter into a new contract with the Government; that if public exigency requires the immediate prosecution of the work, there is no legal obstacle in the way of making a new contract with the sureties, as an open-market transaction, in which they (the sureties) may undertake to complete the work on their own account. This course has frequently been taken for the protection of the Government and the sureties.

354. Where P., a contractor for certain public work, became unable to complete, and failed to comply with his contract, and H., one of his bondsmen, proposed to finish the work on the same terms: *Held*, that H. should not be recognized, under the contract, as a principal contractor or as entitled to compensation in his own right: *Held, further*, that should the bondsman complete the contract, the retained per centum would not be and become due and payable to him in his own right, but only as the representative of P. and by virtue of a proper power of attorney.*—*August* 17, 1881, Vol. 44, pp. 398–400. (U.)

355. Where a party to a contract is entitled to recover in part, for a part performance, the agreement of the parties furnishes, to a certain extent, the measure of remuneration; and so far as the work was done under the contract, the prices specified therein are, as a general rule, the best evidence of the value of the work. See 10 John., 36; 4 Cow., 564; 7 Wend., 2; 12 Wend., 386; 6 N. H., 497; 2 Smith's Leading Cases, 42; 2 Par. on Con., 523.—*July* 13, 1880, Vol. 43, p. 63. (U.)

356. Under a letting for the delivery of supplies, the place of delivery is a material condition of the contract bid for, and the acceptance of a bid for delivery at a different place from the one named in the advertisement is unauthorized and illegal.—*July* 25, 1882, Vol. 46, pp. 84–85. (U.)

357. Where there is a provision in a contract to the effect that the contract may, by mutual consent, be changed, altered, modified, or abrogated, in whole or in part, but that no such change, alteration, modification, or abrogation shall entitle the party of the sec-

* See note to section 1031, *post*.

ond part to increased rates of compensation over the rates specified, a change of the place of delivery, without change of the rate of transportation, is not necessarily such an increase of compensation as to be in violation of such provision. The provision is merely declaratory of what would have been the law had no such stipulation been inserted. In the absence of such stipulation, sections 3709 and 3710 of the Revised Statutes would warrant certain modifications of a contract which a public exigency might demand. Whenever the exigencies of the service demand a new place of delivery, the parties, with or without such stipulation, may modify the contract, but such a change can be justified only as an open-market transaction based upon an exigency. Any modification upon any other basis, either lessening the amount of services or increasing the rate of compensation, would be in violation of the statute.—*January* 3, 1882, Vol. 45, pp. 69–70. (U)

358. Where a contract provides that a contractor shall transport with dispatch the goods and supplies turned over to him, and also prescribes a measure of damage for any unreasonable delay in the delivery of the supplies, a shrinkage in the value of the supplies consequent upon such unreasonable delay, and over and above that which would arise from natural causes, should be charged against the contractor, in addition to the enforcement of the prescribed penalty.—*January* 6, 1882, Vol. 45, pp. 80–81; *February* 9, 1882, Vol. 45, pp. 217–218. (U.)

359. Payment for supplies furnished under contract should not be made to a person holding a general power of attorney; nor should a voucher indorsed by a contractor be paid to the indorsee. If, for any rea-

son, the original contractor cannot sign the receipts, the account should be forwarded to the auditor for settlement before payment is made.—*March* 20, 1882, Vol. 45, pp. 347–348; *April* 11, 1882; *Ibid.*, p. 432; *June* 6, 1882; *Ibid.*, pp. 603–604. (U.)

360. Contracts on file in this office cannot be withdrawn for the purpose of amendment. The proposed amendment should be written, not on the original contract, but in a separate form.—*February* 20, 1882, Vol. 45, p. 247. (U.)

361. A payment upon a contract, when no payment has become due, is an advance of public money prohibited by express act of Congress, and is illegal. (See section 3648, Rev. Stat.; also, 1 Court of Claims, 270.) Where the contract is an entire one, the right to accept or reject the work done under it remains with the United States until the whole is completed; if rejected, nothing whatever would be due.—*November* 9, 1882, Vol. 46, pp. 407–409. (U)

362. Demurrage, properly so called, is not payable unless expressly stipulated for in the contract of affreightment.—*September* 28, 1870, Vol. 33, p. 371 (B.); Abbott on Shipping, p. 304 and p. 391, note 1; Parson's Maritime Law, Vol. 1, p. 262, note 3.

363. A wagon transportation contractor obligated himself by his contract to furnish such number as might be required of horse and mule teams whenever in the judgment of the forwarding officer such teams should be requisite for the *expeditious* movement of public stores, and the United States agreed to give a certain length of notice of the kind and quantity of stores to be transported, to vary according to the quantity, but to be fifteen days for three hundred thousand pounds, except that when teams less than

ten in number were to be furnished for *expeditious movement* only five days' notice was to be given. On December 22, 1880, notice was given to the contractor to furnish, immediately, teams for the quick transportation of ninety two thousand three hundred and forty-six pounds of stores, to transport which twenty-four teams were required. The emergency being pressing, an understanding was had between the forwarding officer and the contractor, whereby the latter waived his right to the full notice to which he was entitled, and the former, in consideration thereof, furnished from the Government supplies the necessary forage (oats) for the teams: *Held*, that, as the special understanding arose out of an emergency, the contractor was not liable to be charged with the grain furnished.—*January* 15, 1883, Vol. 46, pp. 596–599. (U.)

364. A contract, of date of June 14, 1881, was entered into with the Eastern Dredging Company of Boston, for dredging Charles River. The specifications were made a part of the contract, and one of them was as follows: "The dredging must be done in such places and in such manner as the U. S. engineer in charge shall direct, and the material removed by the contractor and deposited by him in such places as shall meet with the approval of the said U. S. engineer in charge." Notice was given that "the value of the material, for filling the low grounds in this vicinity, must be duly considered in the prices offered for the work." The company, failing to complete its contract, demanded to be released from its obligations thereunder, on the ground that it had been deceived and misled by a statement of a Government officer, contained in an official report

made by him to the War Department, two and a half years previously, as follows: "The material" (to be dredged) "has a value of probably not less than 10 cents per cubic yard." *Held*, that as said report was made in the ordinary course of the officer's official duties, for the enlightenment of the War Department and not for the guidance of possible bidders, was not positive in its statements, made no pretense of being exact in its figures, and was not mentioned or referred to in the subsequent agreement, and as the bidder was notified to investigate the value of the material for himself and was bound to regulate his bid accordingly, the demand of the company to be released from its obligations was without foundation or merit; and that if it persisted in its abandonment of the contract, payments due for work performed by it under another contract might properly be withheld.—*January* 20, 1883, Vol. 46, pp 614–618. (U.)

365. A contract was entered into with the Atlantic Dredging Company for the removal of the wreck and cargo of the bark Samarang from the south-channel entrance to New York Harbor. After the company had made certain preparations and incurred certain expenses in an attempt to carry out its contract, it was discovered that the wreck had been removed by the currents of the river: *Held*, that a literal compliance with the terms of the contract having been rendered impossible, without fault of either party, the contractor was entitled to the reasonable value of his labor and expenses incurred before the removal of the wreck became known; that his claim was not for damages sounding in tort, but was one arising upon contract, and was, therefore, within the jurisdiction of

the accounting officers.—*December* 1, 1883, Vol. 48, p. 154. (U.)

366. Where the War Department found that there was such a public exigency, requiring early completion of a canal by contract, as would not allow of the requisite time for advertisement and sealed proposals; *Held*, that the contract could be made without advertisement.—*July* 9, 1883, Vol. 47, pp. 443–444. (U.)

367 Where a contractor dies, and his sureties complete the work under the contract, payment cannot lawfully be made to the sureties. There should be an administrator appointed (in cases where no one is already acting as such) to receive and receipt for the money.—*July* 17, 1883, Vol. 47, p. 459. (U.)

368. A contractor entered into a contract to furnish seven hundred thousand pounds of beef cattle at an Indian agency, at such times and in such quantities as should be required by the Indian agent there stationed. While the cattle were being driven to the agency, in compliance with a requisition from the Indian Department, and before the weighing and inspection of the same, they were stampeded and used as food by the very Indians for whom they were intended: *Held*, that the contractor's claim to be paid for the cattle so taken is not one that can be adjusted by the accounting officers; but that as no fault or negligence was imputed to the contractor and no loss sustained by any one except him, the claim was a proper one to be included in the estimates of the Secretary of the Interior and recommended by him to Congress for appropriation.—*August* 4, 1883, Vol. 47, pp. 524–526. (U.)

369. Upon the death of a party who was under contract with the Government to fill a part of the Po-

tomac flats, his administratrix applied to be released from the contract: *Held*, that it is within the jurisdiction of the War Department to make such modification of the contract as the exigences of the public service may render necessary; and that if the Secretary of War shall find that by reason of such exigency the public interests will be promoted by so modifying the existing contract as to provide that no more work shall be done thereunder, and by agreeing upon the amount to be paid as compensation for the work already done, there is no legal objection to contracting with the administratrix to that effect and re-advertising the residue of the work to be performed.—*August* 20, 1883, Vol. 47, pp. 604–605. (U.)

370. Where actual and necessary expenses have been incurred by a contractor in carrying out in good faith a proper contract with the Quartermaster's Department, and the contract has been subsequently broken off by the Government before the contractor became entitled to payment under it, the claimant is entitled to reimbursement for the expenses so incurred. But no allowance can be made in such a case for the loss of anticipated profits. Such a claim, if it exists, must be the subject of an application to Congress. (See section 593 of Digest of 1869.)—*December* 28, 1874, Vol. 36, pp. 379–381 (B.); *February* 14, 1883, Vol. 47, pp. 21–23. (U.)

371. Where services are performed under contract, the accounting officers are restricted to the terms of the contract, and cannot pass upon the necessity of deviation therefrom or upon the value of work done outside of the contract. (See section 575 of Digest of 1869.)—*May* 23, 1879, Vol. 41, p. 439. (U.)

372. No parol testimony can be received to vary, add to, or control the terms of a written contract. (See section 569 of Digest of 1869.—*May* 23, 1879, Vol. 41, p. 439. (U.)

CONVICTS.

See Appropriations, 44; Bounty, 129, 131, 138; Claims, 297; Deserters, 413; Pardon, 736.

CORPORATIONS.

See Department Practice, 403; Receipts, 1077–1079.

COUNTERCLAIM.

See Set-off.

COURTS.

See Attorneys, 75–76; Department Practice, 392–393, 402; Jurisdiction, 657, 661; Pay and Allowances, 742, 821, 906; Pensions, 988; Railroads, 1064.

COURTS-MARTIAL.

SEE, ALSO, BOUNTY, 130–131, 200, 204; DESERTERS, 413; EVIDENCE, 461; FUEL AND QUARTERS, 509, 539; LEAVE OF ABSENCE, 668; MILEAGE, 692; PARDON, 736; PAY AND ALLOWANCES, 828–829, 833; TRAVELLING EXPENSES, 1167; WITNESSES, 1206–1211.

373. The sentence of a court-martial in the case of a second-class private of ordnance, found guilty of desertion, was that he should forfeit, each month during a given period, fourteen dollars of his monthly pay. Before the completion of the sentence, the pay of privates of this class was reduced by law from sixteen dollars to thirteen dollars per month: *Held*, that as the evident intent of the court was that the soldier should be allowed to draw two dollars of his pay each month and that the balance should be forfeited, only eleven dollars per month should be stopped from his pay from and after the date of its reduction to thirteen dollars.—*February* 16, 1872, Vol. 34, pp. 341–342. (B.)

374. Where no mention is made in a sentence of a forfeiture imposed by law, and a forfeiture different in terms is specifically imposed, it is the general rule to enforce both. But where a soldier was convicted of an eight months' absence without leave and sentenced to forfeit pay for fifteen months, the case was settled upon the assumption that the last-named period was intended to include the period of unauthorized absence.—*April* 3, 1873, Vol. 41, pp. 282–284. (U.)

375. Where, by sentence of court-martial, forfeiture of a specified amount of the pay of a soldier is adjudged, the forfeiture must be collected, if at all, out of pay accruing subsequent to promulgation of the sentence in orders, except when the language of

the sentence clearly shows that such was not the meaning of the court.*—*July* 29, 1880, Vol. 43, pp. 111–112. (U.)

376. The fact that the term for which a soldier enlisted has expired is not, of itself and in the absence of a discharge, a bar to trial and sentence by a court-martial for a military offense, where prosecution was duly begun before expiration of his term. But one who has ceased to be a soldier cannot be held to answer before a military court for an offence committed by him while he was a soldier, unless in consequence of a statute specifically conferring jurisdiction upon the court. In the absence of such statute, the Government, by discharging the soldier before trial, waives its right to try him; and as a court-martial can acquire no jurisdiction after the soldier's discharge, so by his discharge before trial all jurisdiction previously acquired by such court is ousted.—*May* 23, 1881, Vol. 44, pp. 133–135; *February* 11, 1882, Vol. 45, pp. 223–224. (U.)

377. A sentence of a court-martial, promulgated in orders since July 22, 1878, date of General Orders No. 53, Adjutant General's Office of that year, which adjudges forfeiture of a soldier's pay and is silent as to the commencement of the forfeiture, does not apply to pay accrued prior to the promulgation. This rule holds good whether the sentence imposes a forfeiture of a specified sum or of a certain amount per month; and the forfeiture, if it be of a specified sum, begins with the date of such promulgation and continues operative, at the rate of the soldier's current pay less deduction for Soldiers' Home, until satisfied or until

* Construing sec. 1 of G. O. No. 53, A. G. O. of 1878.

the unsatisfied portion thereof is remitted.—*February* 7, 1882, Vol. 45, pp. 205–207. (U.)

378. By General Orders No. 53 of 1878, company commanders are required to note a forfeiture on the company rolls, together with all the incidents and data of the sentence of court-martial that affect the soldier's pay. A neglect of this duty renders the officer who certifies to the accuracy of the roll chargeable with the amount forfeited by such sentence and not noted on the roll. (Army Regulations of 1863, paragraph 1006; Army Regulations of 1881, paragraph 1652.) A paymaster who overlooks a note of forfeiture made on the company roll, is chargeable only with the amount of such forfeiture that is noted on the roll. And the liabilities of these officers attach notwithstanding that, under section 4818, Rev. Stat., relative to the Soldiers' Home, the amount of the forfeiture may ultimately cease to belong to the United States.—*February* 7, 1882, Vol. 45, pp. 205–207. (U.)

379. The executed sentence of a court-martial cannot be set aside or brought to naught by an executive order. Congress alone possesses the authority to direct that an amount forfeited by reason of such a sentence shall be paid to the party convicted or to any other party.—*March* 1, 1883, Vol. 47, pp 81–82. (U.)

DAMAGES.

See Claims, 253; Contracts, 346; Jurisdiction, 641, 662–663.

380. The only damage resulting from breach of contracts on the part of the Government that the ac-

counting officers can pay, is the expenses to which contractors are put, in their efforts to carry out the contract.—*April* 21, 1869, Vol. 32, pp. 185–186. (B.)

381. A claim for unliquidated damages not founded upon contract, cannot be entertained by the accounting officers; but when unliquidated damages which are to be determined and liquidated upon the happening of a contingency are expressly included in the provisions of a contract or of a statute of the United States, the accounting officers may properly entertain jurisdiction.—*January* 22, 1872, Vol. 34, p. 307. (B.)

382. The law makes a broad distinction between those acts provided for by the terms of a contract and those concerning which the contract is silent. In the former case, an injury resulting from the omission of, or negligence in the performance of acts required to be done by the agreement, may be compensated. In the latter, the injury having no express relations to any of the stipulations of the contract, the case resolves itself into one of unliquidated damages, which cannot be entertained by the accounting officers.—*July* 24, 1869, Vol. 32, pp. 373–376; *December* 24, 1869, *Ibid*, pp. 564–566. (B.)

DECEASED CIVILIAN EMPLOYEES.

383. In the absence of any regulation or law providing for the disposition of the effects of deceased civilian employees, Army officers, having in their possession such effects, can only be expected to exercise

such care as they may deem proper to insure delivery to the representatives of the deceased. Their action will be considered as performed in an individual, and not in an official capacity. Such effects may be forwarded, at the request and expense of a duly appointed administrator of the decedent's estate, to such point in the State in which the administrator has jurisdiction as may be by him designated.—*June* 29, 1878, Vol. 40, p. 310; *December* 7, 1878, *Ibid*, p. 665. (U.)

DECEASED SOLDIERS.

See Accountability, 1; Artificial Limbs, 57; Checks, 247, 249; Private Property, 1038.

DECEDENTS.

See Appropriations, 39; Attorneys, 90; Checks, 248; Claims, 283.

DEMURRAGE.

See Contracts, 362.

DEPARTMENT PRACTICE.

See, also, Accounts, 12, 13; Bonds, 110; Bounty, 118, and *note*, 215–216; Comptroller, 304, 306; Disbursing Officers, 438; Evidence, 470; Pay and Allowances, 814.

384. In settling the accounts of an officer or other person who has a continuous account with the Gov-

ernment, it is a just rule, and one which has always been observed in the practice of the accounting officers, to correct, in a succeeding settlement, any error which is found to have been committed in a previous settlement.—*May* 31, 1869, Vol. 32, p. 275 (B.); *April* 29, 1882, Vol. 45, pp. 489–490. (U.)

385. By section 4 of the act of July 12, 1870, (16 Stat., 250,) the indefinite appropriation in the act of March 3, 1849, (9 Stat. 414,) providing for the payment of claims for horses and other property lost in the military service, was repealed: *Held*, that action at the Treasury upon this class of claims was not thereby necessarily prevented; that when an appropriation becomes exhausted or inapplicable, no account calling for a payment out of such appropriation can be officially stated, but where the law declares that under certain conditions certain claims "shall be allowed and paid" by the United States, there is no legal objection to entertaining the claims, investigating the facts and evidence, and making an award. The obligation created by law remains, even in the absence of an appropriation to satisfy it. The Auditor can report the case, as usual, to the Comptroller, and if the latter shall affirm a finding in favor of a claimant, the sum allowed will stand as an audited debt against the Government, to be paid when Congress shall make the necessary appropriation.—*July* 6, 1871, Vol. 34, p. 76. (U.)

386. The accounting officers have always held that when the elements for a correct calculation were furnished in the papers, a certificate from any authority to an erroneous amount is not to be regarded as justifying payment thereof, or as absolving a payee from

the obligation to refund the excess.—*November* 2, 1875, Vol. 37, p. 208. (B.)

387. The rule and practice relative to the re-opening of claims applies only to such as have been finally decided. Where no conclusive action has been had, the case may be taken up for further consideration at any time.—*June* 8, 1877, Vol. 39, p. 142 (C.); 3 Opin., 521.

388. When an account is presented to the Second Auditor, and the subject-matter of the account is within his jurisdiction, section 277 of the Revised Statutes requires him to certify the balance of the account and to transmit the account, "with the vouchers and certificate," to the Second Comptroller for his decision thereon.—*March* 8, 1878, Vol. 40, pp. 31–38; *April* 11, 1882, Vol. 45, p. 438. (U.)

389. The duty of the Auditor, under section 277, Rev. Stat., does not depend upon the amount found to be due. If the balance is nothing, the law requires it to be so certified, and the account, vouchers, and certificate are to be transmitted to the Comptroller.—*Ibid.* (U.)

390. The question whether a claim has been fully passed upon by the accounting officers is a question of fact, addressed to them, to be determined by an examination of the records and files pertaining to the case. If it appear that a claimant is in no way responsible, by his neglect or otherwise, for a decision on one part of his claim before any consideration had been given to another part thereof, he will be entitled to a hearing as to the unconsidered portion; but in such case the accounting officers should look into the whole of the original account, so far as to see that any new allowance, together with what has already

been allowed, shall not exceed the total to which claimant was originally entitled. If, however, it appear that it was the claimant's fault that he accepted pay as to a part only of his original account, he should be required to procure an order for a rehearing before any further statement of balance is made.—*February* 18, 1879, Vol. 41, pp. 152–153. (U.)

391. It is a settled practice of the Department and of the accounting officers that the decisions of the Second Comptroller will not be opened or set aside or reconsidered by the accounting officers unless the case be resubmitted to the Comptroller by the head of the proper Department, under section 191, Rev. Stat., or a rehearing be recommended by the Secretary of the Treasury.—*April* 30, 1877, Vol. 39, p. 31 (C.); *March* 15, 1879, Vol. 41, pp. 217–218; *April* 11, 1882, Vol. 45, p. 433. See, also, Vol. 45, pp. 662–663, June 21, 1882. (U.)

392. The rules of practice of the Department prohibit the Second Comptroller's Office from proceeding to the final adjustment of an account while the same matter is pending between the same parties in court.—*April* 8, 1879, Vol. 41, p. 295. (U.)

393. But the special provisions of the act of March 3, 1879, (20 Stat., 390,) makes it the duty of the accounting officers to act on certain land-grant railroad accounts, although the same may be pending in the Court of Claims.—*April* 25, 1879, Vol. 41, p. 354. (U.)

394. Where, under a contract with the Indian Department, several deliveries of goods were made from time to time: *Held*, that so long as any of the items of the contractor's account under that contract remained suspended, the whole account might be reexamined by the accounting officers without an order

for re-opening; and that the question whether the claimant made such a showing as to entitle him to a re-examination of the allowances made to him in settlements already had with him, under the contract, was addressed to the discretion of the Second Auditor.—*August* 4, 1879, Vol. 41, p. 607. (U.)

395. It is contrary to the practice of the accounting officers to accept evidence in contradiction of the records of the War Department, and all applications for amendment of said records should be presented to the Adjutant-General of the Army.—*February* 16, 1878,Vol. 39, pp. 661–663; *March* 18 and 27, 1879, Vol. 41, pp. 241, 262; *May* 15, 1880, Vol. 42, p. 629; *June* 24, 1882, Vol. 45, p. 678; *March* 9 and *August* 6, 1883, Vol. 47, pp. 107, 530–531. (U.)

396. Where a question concerning a doubtful allowance has been submitted to Congress and an actual appropriation made by that body of the precise amount there can be no valid objection to the payment.—*November* 8 and 20, 1876, Vol. 38, pp. 373–376, 384–385 (C.); *July* 17, 1880, Vol. 43, p. 80. (U.) 3 Opin. 168. (Early's case.)

397. Except in cases of fraud or mistake, and then only so far as to warrant the withholding of payment until the matter may be again submitted to Congress. Where Congress at its next succeeding session after such resubmission has failed to act upon the matter, payment has been made, notwithstanding objection.—*July* 17,1880, Vol. 43, p. 80. (U.)

398. Where a balance in favor of a claimant has been regularly certified by the Second Comptroller it cannot lawfully be changed without further action on his part.—*August* 17, 1880, Vol. 43, pp. 157–158. (U.)

399. A requisition issued by the Secretary of the Interior must conform, as to the amount named therein, to the Comptroller's certificate.—*August* 17, 1880, Vol. 43, p. 158. (U.)

400. Where payment of a claim is to be made to an administrator, the practice requires that the evidence that administration has been granted shall be submitted to the accounting officers for their examination.—*May* 7, 1881, Vol. 44, p. 75; *August* 3, 1882, Vol 46, pp. 127–128. (U.)

401. Where new evidence is presented, after a balance has been certified by the Auditor, it is the practice to resubmit the account to the Auditor for further consideration.—*February* 28, 1882, Vol. 45, p. 269. (U.)

402. It has long been and still is the settled and unquestioned practice of the accounting officers not to enter upon settlement of an account or claim which is known to be at the time pending before Congress or the courts.—*December* 13, 1883, Vol. 48, p. 196. (U.)

403. Since the ruling of the United States Supreme Court in Gillis *v.* United States, and in Spofford *v.* Kirk, no person except the original claimant can acquire an interest in or be entitled to receive payment of a claim until after the warrant shall have been drawn; and the accounting officers have no authority for certifying an amount to be due to one person and directing payment of the same to another. But, in the case of a corporation, payment to its treasurer or such other officer as by its charter or the organic act of incorporation is empowered to receive and hold its moneys, is payment to the corporation. In cases of this class, where there is sufficient information on the point, it is a matter of convenience that the re-

port of the Auditor and Comptroller, which directs payment to the corporation, should also designate the treasurer or other officer whose function it is to receive the money of the corporation. When balances are certified in favor of partners, and the firm name does not disclose the names of the individuals composing the firm, it is desirable that the accounting officers, if they have sufficient proof, should state in their report or certificate the names of some or all of the partners, that it may appear on the face of the certificate what persons have power to give a valid receipt. Where the officer or individual empowered to receive the money cannot be ascertained without unreasonable delay, the report or certificate should name the corporation or firm without attempting to designate the officer of the corporation or the member or members of the firm entitled to receipt for the money. In the case of financial agents, the proof of whose authority to receive and receipt for money in the name of corporations rests upon the publicity and notoriety of their modes of business and not upon powers of attorney or other written evidence and whose acts the corporation would be estopped from denying, no direction or information need be inserted in the report of the Auditor and Comptroller.—*June* 16, 1883, Vol. 47, pp. 373–378. (U.)

404. All certificates issued in pursuance of section 273, Rev. Stat., in the settlement of accounts against the Government, accruing in the Navy Department, should be transmitted to the Secretary of the Navy.—*January* 22, 1884, Vol. 48, p. 341. (U.)

405. There is no precedent or authority for basing the settlement of a balance by the accounting officers

on stipulations of the parties.—*May* 2, 1884, Vol. 48, pp. 670–671. (U.)

406. A practice permitting payment of an account or claim before the certificate of the accounting officers is transmitted to the Secretary of the Department in which the expense was incurred, would do away with all opportunity of returning accounts to the Comptroller for reconsideration under section 191, Rev. Stat. Hence, when certificates of balances settled by the accounting officers are sent to the proper Department, the manner of transmission must be such, in order to justify payment, as will be tantamount to a certification of the balance to the Secretary of that Department.—*December* 19, 1883, Vol. 48, p. 332. (U.)

407. The certificates issued by an Anditor and the Second Comptroller on the settlement of accounts constitute the authentic original record of the decisions to which they relate, and the law requires that they be kept in the Departments. It is not considered lawful to permit them to be delivered to private parties. Section 273, Rev. Stat., is mandatory in requiring them to be transmitted to the Secretary of the Department in which the expenditure has been incurred. After being acted upon by that Department they are to be returned to the proper Auditor for safe keeping.—*December* 19, 1883, Vol. 48, pp. 338–340. (U.)

408. The certificates of this class issued in what are called "certificate cases" do not differ in any substantial particular from those that are called "reports." In practice, the balances certified in the former cases are paid by disbursing officers, and in the latter cases a requisition is issued by the Secretary of the Department in which the expenditure was incurred.—*December* 19, 1883, Vol. 48, p. 331. (U.)

409. Whether the money with which to pay a certified balance is first placed in the hands of a disbursing officer or is paid to the claimant directly by the Treasurer of the United States, if it is appropriated for the use of the War or Navy Department, it is, under section 3673, Rev. Stat., "drawn from the Treasury by warrants of the Secretary of the Treasury, upon the requisition of the Secretaries of those Departments, respectively, countersigned by the Second Comptroller of the Treasury, and registered by the proper Auditor," and passes from the Treasury under section 305, Rev. Stat., which provides that "The Treasurer shall receive and keep the moneys of the United States, and disburse the same upon warrants drawn by the Secretary of the Treasury, countersigned by either Comptroller, and recorded by the Register, and not otherwise." This, being a later enactment than that part of the act of September 2, 1789, (1 Stat., 66,) now found in section 269, Rev. Stat., which makes it the duty of the First Comptroller "To countersign all warrants drawn by the Secretary of the Treasury, which shall be warranted by law," is not modified by the older provision, the wording of which has not been changed since 1817.* (See 9 Stat., 396, section 12.)—*Ibid.*, pp. 330–334. (U.)

*Since the act of 1789, the statutory provisions designating what officers shall countersign warrants have been changed many times, and they have been modified by each of the following acts: May 8, 1792, (1 Stat., 280, section 2;) July 16, 1798, (1 Stat, 610, section 2;) March 3, 1817, (3 Stat., 367, sections 7, 8, and 9;) May 7, 1832, (3 Stat., 689, section 3;) July 2, 1836, (5 Stat., 80–81, sections 6 and 8;) March 3, 1849, (9 Stat., 396, section 12;) and June 8, 1872, (17 Stat., 291, section 47.) No one of these modifying acts has in express terms repealed the words quoted in the text from the acts of September 2, 1789, and March 3, 1817, but they have contained provisions which necessarily change the meaning and effect of the original enactment. The act of March 3, 1817, required the Second Comp-

410. Rejected claims are not, in practice, deemed to be within the provisions of section 191, Rev. Stat., because they do not come before the Secretary of a Department for the issuance of a requisition for a warrant. Hence, if such claims are to be re-examined, it must be in pursuance of the Treasury circular of November 13, 1871.*—Claim of John H. Caldwell, *December* 14, 1875, and *November* 12, 1884, Vol. 49, pp. 655–667. (U.)

troller to countersign all warrants drawn on the Treasury for Army and Navy expenditures, and the words there employed for that purpose have remained unchanged and have been carried into the Revised Statutes, as have those quoted in the text; but subsequent legislation has rendered a literal construction of these enactments impossible. From March 3, 1849, to the date of the revision, the Commissioner of Customs was authorized to countersign warrants drawn by the Secretary of the Treasury.

There can be little doubt that the intent of the laws now in force is that the Second Comptroller shall countersign all warrants for payment of expenses accruing in the War and Navy Departments, that the Sixth Auditor shall countersign those relating to the postal service, and that others shall be countersigned by the First Comptroller. But as countersigning the warrant is a mere ministerial act, exact compliance with the statutes which declare what officers shall countersign, seems to have been treated as a matter of comparatively minor consideration, while, as a rule, strict construction has been given to those provisions which determine what particular officers are severally authorized to decide upon and certify to the Register and to the respective heads of Departments the balances which are by law made conclusive upon the executive branch of the Government. The function of countersigning is ministerial—as clearly so as is that of issuing an execution by the clerk of a court or by a judge who has no clerk. It is quite distinct from the *quasi* judicial function of deciding upon and certifying balances. The certified balance settled by a Comptroller or Commissioner of Customs is warrant of law for the issuing and countersigning of the warrant for payment, upon the same principle that a judgment or decree is warrant of law for the issuing of final process.

* The Treasury circular above referred to is as follows:

"TREASURY DEPARTMENT,
"*November* 13, 1871.

"SIR: My attention having been called to the fact that claims against the United States which have been submitted for adjudication to the Court of Claims are sometimes brought before the accounting officers of the Treasury for hearing and determination by them after such submission, I respectfully request that no such claim shall hereafter be enter-

DESERTERS—DESERTION.

SEE, ALSO, APPROPRIATIONS, 33; BOUNTY, 178, 207; CLAIMS, 270, 283; COURTS-MARTIAL, 373; NATIONAL HOME FOR DISABLED VOLUNTEER SOLDIERS, 718; PAY AND ALLOWANCES, 811, 836; STATE CLAIMS, 1119.

411. A soldier enlisted January 28, 1863, for three years, deserted February 26, 1863, returned February 9, 1865, and was killed September 30, 1865. A claim having been made for arrears of pay at the rate of sixteen dollars per month: *Held*, that payment should be made at the rate of but thirteen dollars per month, as the soldier on his return from desertion should be required to make good the time lost, at the rate of pay which was authorized by law for and during the time of his absence.—*January* 22, 1869, Vol. 32, pp. 41–42. (B.)

412. A civilian employee of the Quartermaster's Department who voluntarily quits the service is not in any sense "a deserter," or subject to any of the legal penalties attaching to desertion.—*August* 23, 1869, Vol. 32, p. 415. (B.)

413. An escape from arrest or confinement while serving out the sentence of a court-martial cannot be regarded as desertion in such sense as to entitle the party rearresting the convict to the reward authorized for the apprehension of deserters.—*March* 8, 1872, Vol. 34, p. 375. (B.)

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tained by the accounting officers, but that the same be left for the determination of the Court of Claims.

"In cases where a claim or account against the United States has been examined, and a decision made thereon by the proper accounting officers, I request that no such case shall be reopened except upon application to the Secretary of the Treasury, and by his direction in writing.

"Very respectfully,

"GEO. S. BOUTWELL,
"*Secretary of the Treasury.*

"HON. JOHN M. BRODHEAD,
"*Second Comptroller.*"

414. The Army regulation that "every deserter shall forfeit all pay and allowances due at the time of desertion" cannot be evaded by a transfer by an officer or soldier, prior to desertion, of his pay accounts. The assignee can acquire no greater rights in the premises than his assignor possessed, and must be held to take with notice that he is buying what may become forfeited by the desertion of the principal.—*March* 4, 1872, Vol. 34, pp. 365–366; *March* 6, 1874, Vol. 35, pp. 650–651 (B.); *May* 1, 1878, Vol. 40, pp. 167–168. (U.)

415. A soldier who, previous to enlistment, had deserted from the Navy has no claim to pay for the portion of the time necessary to make up his term of service in the Navy; nor has a sailor who had previously deserted from the Army any claim to pay for the portion of the time necessary to make up his term in the Army.—*April* 23, 1874, Vol. 36, pp. 15–16. (B.)

416. The real status of a deserter from the Marine Corps, who subsequently enlisted in the Army and surrendered under the President's proclamation, (General Orders No. 102, Adjutant-General's Office, 1873,) is the same as if he had not enlisted in the Army. The latter enlistment was a fraud, and was null as a contract, and would not have been validated by the deserter's discharge from the Marine Corps; but the man may be regarded as having been transferred from the Marine Corps to do duty with the Army, and may be paid out of the appropriation for pay of the Army. The amount paid to him under his fraudulent enlistment need not be refunded to the Army by the Marine Corps, and the President's proclamation evidently contemplated a remission of any re-

fundment of wages already received by a surrendering deserter.—*November* 30, 1874, Vol. 36, pp. 329–330. (B.)

417. Certain drafts, issued to United States soldiers for extra-duty services, were returned to the United States Treasurer for the reason that the payees were deserters: *Held*, that if the desertion was fully established and if the amounts represented by the drafts had accrued during the enlistments from which the soldiers had deserted, the drafts belonged to the Soldiers' Home, and payment thereof should be made to the treasurer of that institution, upon his indorsement.—*March* 30, 1875, Vol. 36, p. 521. (B.)

418. The appraised value of a horse owned by a trooper at the date of his muster, and subsequently turned over to the Government at its appraised value, must be paid without respect to a charge of subsequent desertion. The purchase and sale is a distinct matter, disconnected from any obligation springing from the contract of enlistment whether fulfilled or violated.—*June* 23, 1875, Vol. 36, p. 671. (B.)

419. A soldier acquitted of the charge of desertion, but convicted of the minor offense of absence without leave, is responsible for the expenses of his apprehension, which must be deducted from his pay.*—*February* 12, 1869, Vol. 32, pp. 84–85; *November* 4, 1873, Vol. 35, pp. 485–486. (B.)

420. The amount of the reward authorized by General Orders No. 325, Adjutant-General's Office, of 1863, to be paid for the apprehension and delivery of a deserter, may be stopped against the soldier's pay, even when the soldier is apprehended on a charge of desertion and is found guilty only of the minor of-

* See foot-note on page 158.

fense of absence without leave; and the right to the reward of the person making the arrest of a soldier charged with the crime of desertion is not dependent upon the latter's guilt or innocence.*—*January* 20, 1880, Vol. 42, pp. 296–298. (U.)

421. Where a charge of desertion, borne against a soldier upon the company roll, was removed absolutely and without qualification by act of Congress: *Held*, that he was entitled to all pay and bounty to which he would have been entitled had he not been charged with desertion.—*January* 3, 1883, Vol. 46, pp. 553–555. (U.)

422. A soldier was sworn into the service as a recruit February 17, 1865, and during the same month, under General Orders No. 305, of 1864, the sum of four hundred dollars was taken from him and placed in the hands of a paymaster, who duly accounted therefor. The soldier joined his regiment and was on duty with it on June 30, 1865; but between that date and August, 1865, when his company was mustered out, he deserted, and was never apprehended, nor was the charge of desertion ever removed. In 1875 said four hundred dollars was turned over to the National Home for Disabled Volunteers. The soldier now appears and files a claim for the recovery of four hundred dollars, the sum deposited by him

*These two decisions (sections 419 and 420) have been overruled by the Comptroller's instructions, upon authority of the opinion of Attorney-General Devens of date of March 24, 1880, as published in G O. No. 21, A. G. O., of 1880. The rule laid down by the Attorney-General is applied to all unsettled cases, but does not authorize the opening of settlements heretofore made by the accounting officers under the old practice. What action should be taken in cases in which the $30 has been collected (*i e.*, deducted from the soldier's pay) by paymasters is not clearly settled. The case of Gabriel Wagner, submitted September 30, 1883, did not, by reason of other complications, clearly settle this question, although it was therein presented.

with the paymaster in February, 1865: *Held*, that he is entitled to recover, for the reason that there is no statute or regulation declaring that the private funds of a volunteer soldier, placed in the custody of the Government, are forfeited by desertion; and in the absence of such statute or regulation there is no general principle of law which renders such funds forfeitable to the Government. (See 13 Opinions, 210.) In the event, however, of the soldier being, at the time of desertion, or afterward becoming, indebted to the Government, such a private fund may be applied by the Government to the discharge of such indebtedness.—*February* 21, 1883, Vol. 47, pp. 58–63 (U.); sec. 390, Digest of 1869; 15 Peters, 370.

DISBURSING OFFICERS.

See, also, Appropriations, 51; Bonds, 110–111; Checks, 247–248; Claims, 275, 278; Department Practice, 408; Indian Affairs, 584, 587–588; Indian Agents, 625; Mileage, 691; National Home for Disabled Volunteer Soldiers, 722; Powers of Attorney, 1032; Receipts, 1077; Stoppages, 1123; Travelling Expenses, 1178; Vouchers, 1199.

423. Disbursing agents are not responsible for the keeping of public funds after depositing them with the United States Treasurer or any agent of the Government authorized to receive Government funds on deposit.—*March* 8, 1869, Vol. 32, pp. 108–109 (B.); *January* 12, 1882, Vol 45, pp. 105–107. (U.)

424. An Army officer who disburses public money upon vouchers which afterwards prove to have been forged or false, is primarily responsible to the United States for the amount of the loss.—*May* 25, 1869,

Vol. 32, pp. 261–262 (B.); *March* 13, 1882, Vol. 45, p. 328. (U.)

425. No power is vested by law in any executive officer to relieve from responsibility a disbursing or other officer of the Government for public money lost by him.—*July* 20, 1869, Vol. 32, pp. 361–364. (B.)

426. Where a disbursing officer made payment of allowances to an Army officer in accordance with the laws and regulations existing prior to July 17, 1870, before it was possible for him to know of the provisions of the Army appropriation act of that date, (16 Stat., 320,) payment of such allowances was admitted to the credit of the disbursing officer.—*December* 10, 1870, Vol. 33, p. 382. (B.)

427. It is not within the scope of any disbursing officer's duty or authority to decide a claim against the United States or to bind the Government to payment by giving retrospective effect to a lease or other agreement.—*January* 10, 1871, Vol. 33, pp. 431–432. (B.)

428. A disbursing officer of the Quartermaster's Department, to whom funds have been remitted by the Indian Bureau, to be applied in settlement of Indian claims, cannot be debited on the books of the accounting officers of the Treasury with such funds, or held accountable therefor under his official bond as a disbursing officer.—*February* 13, 1872, Vol. 34, pp. 335–336. (B.)

429. Where, from funds deposited by a disbursing officer in the Sub-Treasury, a United States assistant treasurer pays forged checks, the disbursing officer is entitled to a credit in his accounts for the amount so paid.—*April* 6, 1872, Vol. 34, pp. 421–422. (B.)

430. While, as a general rule, no payments should be authorized for the temporary safe-keeping of public money in the hands of a disbursing officer, exceptions may justly and legally be made. The safe-keeping of money over night or for a longer period may be a necessary incident of its transportation, and cases may occur in which a disbursing officer would be justified in paying for the use of a safe, if one was obtainable at his stopping place, while on a journey with public funds, the expense to be charged to the appropriation for "Incidental expenses of the Army."—*February* 13, 1874, Vol. 35, pp. 610–611. (B.)

431. Moneys realized from an investment of public funds in the hands of a disbursing agent should be treated as "Miscellaneous receipts," and covered into the Treasury under that head.—*February* 12, 1875, Vol. 36, pp. 444–445. (B.)

432. In the adjustment of accounts of disbursing officers of the Navy, this office will require that all payments for newspaper advertisements be made in conformity with sections 853–854, Rev. Stat., so much of section 3826, Rev. Stat., as refers to the publication of advertisements in newspapers being repealed by the act of March 3, 1875, (18 Stat., 342.) A copy of the advertisement, as well as the written authority of the Department for such advertisement, must accompany the voucher on which payment is made.—*May* 14, 1877, Vol. 39, p. 72. (C.)

433. The doctrine that "a disbursing officer is *in arrears* the moment public money is placed in his hands, and so continues until all his accounts are balanced on the books of the Treasury Department," is an erroneous one. Until the time for accounting (or explaining) has passed, a disbursing officer is not

in arrears because of money so placed. If, however, the examination of an account results in an *absolute disallowance*, it then becomes apparent that the officer is in arrears as to those items; but a suspension calling for explanation is not evidence of his being in arrears within the meaning of section 1766, Rev. Stat.—*May* 16, 1877, Vol. 39, pp. 74–77 (C.); Vol. 43, p. 559 (U.); 4 Opin., 36.

434. Disbursing officers of the United States Navy should note on the quarterly pay-rolls rendered to the accounting officers for settlement, not only the date of the enlistment of each marine, but also the dates of each and every re-enlistment—*April* 24, 1878, Vol. 40, p. 152. (U.)

435. Where one of two or more partners, parties to a Government contract, has deceased, the disbursing officer in charge will, if the surviving partners consent, be justified in paying "the contractors' working force on the rolls," during such reasonable time as may be required for the taking out of letters testamentary; the amount so paid to be treated by the Government as payments made to the contractors.—*March* 11, 1879, Vol. 41, pp. 203–205. (U.)

436. The settlements or rests made monthly or quarterly in the accounts of disbursing officers who are still acting as such are not deemed final settlements within the meaning of the rule that requires application to be made to the Secretary of the Treasury for a re-examination. The officer's account being still current, such settlements do not purport to show whether or not the officer was in default at the time the settlement was made.—*September* 18, 1878, Vol. 40, p. 500. (U.)

437. It is the duty of a disbursing officer to file all necessary vouchers and explanations of his accounts at the time he is required by law to file his account. Further time in which to file vouchers and additional proofs is not a legal right; and when further time is granted it should be only such reasonable time as is absolutely necessary.—*May* 6, 1879, Vol. 41, pp. 390–395. (U.)

438. Where a disbursing officer fails to render an account at the time required by law, such administrative examination may be made as may be necessary to show the amount unaccounted for; and the account should then be transmitted to the proper auditor for settlement.—*May* 6, 1879, Vol. 41, p. 393. (U.)

439. If a disbursing officer has reason to doubt the legality of a claim, he is justified in declining to make any payment thereon until the claimant shall have caused it to be presented to the accounting officers, and until a favorable decision shall have been rendered by them thereon.—*October* 2, 1879, Vol. 42, pp. 44–45; *March* 14, 1882, Vol. 45, p. 330. (U.)

440. Opportunity to file additional evidence after the expiration of the thirty days allowed by law for the filing of his quarterly accounts can in no case be regarded as a *right* belonging to a disbursing officer, and when granted it will be for such time as the accounting officers may deem reasonable.—*October* 10, 1879, Vol. 42, pp. 54–55. (U.)

441. Paragraphs I and II, chapter 43, of Navy Regulations of 1832, regarded as provisions intended to prohibit payment in certain cases by Navy disbursing officers, are legal; but they cannot so operate upon the accounting officers of the Treasury as to

override Federal or State law.—*February* 12, 1880, Vol. 42, p. 354. (U.)

442. An application of an Army or Navy disbursing officer for relief, under the act of June 23, 1870, (16 Stat., 166,) cannot be considered when an allowance of credits was not recommended by the proper Secretary within five years from the date of passage of the act.—*July* 26, 1880, Vol. 43, pp. 100–101. (U.)

443. An assignment by an officer of his pay account before it becomes due is in contravention of paragraph 1349 of the Army Regulations of 1863, and is void; and a disbursing officer who makes payment of such account, with knowledge of the facts, is responsible to the United States for any loss that may result.—*April* 16, 1884, Vol. 48, p. 614. (U.)

444. A disbursing officer who makes a payment in disregard of the restrictions of paragraph 1348 of the Army Regulations of 1863, which requires that so far as practicable officers are to draw their pay from the paymaster of the district where they may be on duty, and in disregard of the circulars of the Pay Department on the same subject, does so at his own risk.—*April* 16, 1884, Vol. 48, pp. 613–614. (U.)

445. Disbursing officers will not be allowed credits for payments made by them under an appropriation, over and above the amount received by them under that head, when such appropriation shall have been exhausted at the time of the settlement of their accounts. See section 81 of Digest of 1869; Treasury Department Regulations of December 19, 1854; Indian Office Regulations of October 1, 1880, section 200.—*March* 21, 1883, Vol. 47, pp. 127–128; *May* 8, 1884, Vol. 48, pp. 697–698. (U.)

DISCHARGE PAPERS.

See Soldiers' Discharges, 1110–1111.

DISLOYALTY.

See Loyalty.

DRAFT—SUBSTITUTES.

See, also, Bounty, 140, 188.

446. Under section 13 of the act of March 3, 1863, (12 Stat., 731,) and sections 10 and 17 of the act of February 24, 1864, (13 Stat., 8,) clergymen were not exempt from draft. Payment of commutation, therefore, was lawfully exacted of a Catholic priest drafted between March 3, 1863, and September 5, 1864. Even under the provisions of section 2 of the act of February 28, 1867, (14 Stat., 417,) authorizing repayment of commutation money paid by persons not legally liable to draft, a claim not filed within two years from March 1, 1869, (see 15 Stat., 282,) cannot be allowed.—*March* 31, 1879, Vol. 41, pp. 269–270. (U.)

447. D. was drafted and mustered into service November 1, 1864, to serve one year. He furnished a substitute who was mustered into service November 22, 1864, to serve one year. By mistake D. was for-

warded to the regiment from the rendezvous November 25, 1864, and held in service until April 19, 1865, when he was discharged in compliance with orders issued from the United States Adjutant-General's office: *Held*, that it was beyond the power of any officer of the Government to cause the amount paid by D. to or for his substitute to be repaid to him, and that relief could be obtained by him only through Congress.—*April* 11, 1879, Vol. 41, pp. 315–316. (U.)

DRAFTS.

See Attorneys, 76, 91, 93; Checks, 251; Desertion, 417; Jurisdiction, 647.

DRUGS AND MEDICINES.

See, also, Medical Attendance, 685.

448. The circular of September 26, 1873, issued from this office, with reference to purchases made at the different naval stations, is so far modified as to permit the purchase of all drugs and medicines and articles of a dietary nature for the use of hospitals by the chief medical officer, subject to the approval of the Bureau of Medicine and Surgery.—*December* 18, 1873, Vol. 35, pp. 540–541. (B.)

EIGHT-HOUR LAW.

449. Night watchmen are not entitled to the benefit of the eight-hour law of May 18, 1872, (17 Stat., 134, section 2.)—*July* 12, 1872, Vol. 34, p. 603. (B.)

450. Superintendents, clerks, and policemen are not embraced in the provisions of section 2 of the act of May, 1872, (17 Stat., 134,) relating to hours of labor, inasmuch as they are neither "laborers, workmen, nor mechanics."—*September* 7, 1872, Vol. 34, pp. 664–665. (B.)

451. But all persons, however designated, from whose pay a deduction was made by reason of any construction of the act of June 25, 1868, (15 Stat., 77,) should have the amount deducted restored to them, as such reduction could not have been made under that act had they not been considered either "laborers, workmen, or mechanics."—*October* 4, 1872, Vol. 34, pp. 678–679. (B.)

452. Men employed by the hour are not entitled to the benefits of the eight-hour law of June 25, 1868, (15 Stat., 77.)—*November* 29, 1872, Vol. 35, p. 61. (B.)

453. The act of May 18, 1872, (17 Stat., 132, sec. 2,) applies to all laborers, workmen and mechanics employed by the Government at reduced rates of pay between June 25, 1868, and May 19, 1869, whether the reduction was caused by decreasing the allowance of pay per day of eight hours or by requiring ten hours of work without increase of pay.—*March* 17, 1873, Vol. 35, p. 210–211. (B.)

454. All such persons as perform "manual or muscular" labor in contradistinction to "brain" labor may be classified as "laborers, workmen or mechanics," within the meaning of section 2 of the act of May 18,

1872, relative to hours of labor. (17 Stat., 134.) An engineer, *i. e.*, a man running an engine, may be so classified.—*November* 20, 1872, Vol. 35, pp. 48–49; *January* 27, 1873, *Ibid*, pp. 146–147; *February* 28, 1873, *Ibid*, p. 185 (B.); *January* 8, 1877, Vol. 38, pp. 475–477. (C.) But not a civil engineer.—*December* 9, 1873, Vol. 35, pp. 527–529. (B.)

455. The act of May 18, 1872, known as the eight-hour law, (17 Stat., 134,) applies only to such laborers, workmen and mechanics as were employed by the Government for a certain fixed period each day, commencing at a stated time in the morning and working until a specified time in the evening, thus making regular hours; and not to such laborers (as teamsters, hostlers, and others) whose services are of an intermittent character, and who, from the nature of their employment, are not, and cannot properly be confined to fixed hours; nor to assistant storekeepers employed as minute men, liable to be called on at any time, early in the morning and late in the evening, without regard to ordinary working hours.—*March* 23, 1874, Vol. 35, p. 674. (B.)

ENDORSEMENT.

456. Where a Treasury certificate is made payable to partners, an endorsement by one of them, in the name of the firm, is sufficient.—*September* 13, 1880, Vol. 43, p. 223. (U.)

ENLISTMENTS.

See Disbursing Officers, 434; Evidence, 462; Time, 1146.

ERASURES—INTERLINEATIONS.

See, also, Contracts, 345.

457. Erasures or interlineations which materially affect the meaning or purport of vouchers should be attested in the margin as having been made prior to the execution of the paper.—*January* 28, 1876, Vol. 37, p. 399. (B.)

ERRORS, CORRECTION OF.

See Accounting Officers, 3; Appropriations, 31, 50–51; Department Practice, 384; Pay and Allowances, 806–807; Salvage, 1097.

EVIDENCE.

See, also, Agency, 20; Boards of Survey, 96; Bounty, 150, 176; Claims, 267; Contracts, 345, 355, 372; Department Practice, 395, 400–401; Disbursing Officers, 410; Fuel and Quarters, 533; Indian Affairs, 579; Indian Agents, 617; Time, 1140; Vouchers, 1196–1197.

458. Parol evidence is not admissible to vary the terms of a charter-party.—*January* 29, 1869, Vol. 32, pp. 56–57. (B.)

459. The official certificate of the Swiss Government will be accepted as sufficient proof of the heirship of applicants within its jurisdiction.—*April* 7, 1870, Vol. 33, p. 84. (B.)

460. The "Roll of soldiers mustered into the service of the State to be mustered into the United States service, but who died or were discharged prior to muster into the United States service," as found in volume 2, pages 972–975, of the report of the adjutant-general of Kentucky, may be received as evidence of service, and in the cases of deceased men the claims should be settled when satisfactory evidence is furnished that the soldier died of disease or wounds contracted in the line of duty since enlistment.—*July* 8, 1871, Vol. 34, p. 81. (B.)

461. Parol evidence cannot be received by this office to set aside the findings and sentence of a court-martial.—*March* 18, 1872, Vol. 34, p. 396. (B.)

462. The proper source of information as to the enlistment and service of a seaman is the Navy Department. Statements of a subordinate can be accepted as evidence only in the absence of information from the Department itself, and even then should be referred to the Department for its action in the premises.—*June* 3, 1875, Vol. 36, p. 631. (B.)

463. In claims by the owners of chartered vessels for pilotage, the evidence required is the original receipts of the pilots to the owners, supported by the sworn testimony of the owners as to payment by them and as to the necessity for the rendition of the services and that the pilot was not employed in any other capacity during the period of the service.—*March* 20, 1876, Vol. 37, pp. 552–556. (B.)

464. Testimony in contradiction of the records of the War Department will not be considered by this office.—*August* 11, 1877, Vol. 39, pp. 295–296 (C.); *March* 31, 1882, Vol. 45, p. 396. (U.)

465. Section 1 of the act of March 3, 1849, (9 Stat., 414, Rev. Stat., section 3482,) providing for payment for horses and equipments lost in the military service, is remedial and should be liberally construed. The loss of the property must be shown to have occurred in one of the ways specified in the act; but as direct, positive proof of the manner of the loss is generally impracticable, it is to be inferred from other facts which may be directly proved. If the facts proven are such that by fair and reasonable inference the property must have been lost in one of the specified ways, it is held to have been so lost.—*May* 8, 1878, Vol. 40, pp. 182–185. (U.)

466. Paragraph 1311 of Army Regulations of 1863 should be understood as indicating the evidence on presentation of which accounts of private physicians will ordinarily be allowed, but not as declaring that no other evidence can be received if for any reason the evidence mentioned cannot be produced.—*June* 5, 1878, Vol. 40, pp. 248–251. (U.)

467. Where the War Department record simply shows that the soldier was discharged for disability, without disclosing its nature, the practice is to accept parol evidence to prove both the nature of the disability and the fact that it was incurred in the line of duty; and if from the evidence adduced it becomes apparent that the alleged injury was one that might have originated as alleged, and did not exist at the date of enlistment, the fact that the soldier received no discharge certificate and no pay does not justify

an inference of fraud on his part, and he is entitled to pay from the date of enlistment to the date of discharge, and to both ordinary and additional bounty.—*December* 19, 1878, Vol. 41, pp. 6–7. (U.)

468. Neither the act of March 3, 1863, (12 Stat., 743,) nor the practice of the accounting officers, requires that a claim for refundment of the advance bounty allowed by section 6 of the act of July 5, 1862, (12 Stat., 505,) where such advance has been erroneously charged against a discharged soldier, shall be supported by record evidence showing that the disability that caused the discharge was incurred subsequent to the last enlistment. Where the records are silent on that point, parol evidence will be accepted to establish the origin of the disability.—*January* 7, 1879, Vol. 41, pp. 37–38. (U.)

469. Where letters of guardianship were granted to R., and subsequently letters were granted to T.: *Held*, that as both letters *issued out of the same court*, evidence of the death or discharge of the guardian first appointed need not be required.—*August* 6, 1879, Vol. 41, pp. 611–612. (U.)

470. But such evidence will be required where the letters were respectively issued by the courts of counties lying in different States.—*April* 29, 1878, Vol. 40, pp. 159–160. (U.)

471. In every instance the second letters, or a duly certified copy of the same, should be forwarded to the accounting officers.—*April* 29, 1878, Vol. 40, pp. 160–161. (U.)

472. The certificate of a quartermaster is not the only evidence admissible in proof of the fact that there are no public quarters at a given post.—*January* 6, 1881, Vol. 43, p. 475. (U.)

473. As to what evidence is deemed ample to warrant payment to one claiming to be an administrator, see claim papers in Frank's case.—*January* 3 and *February* 17, 1881, Vol. 43, pp. 457, 581–582. (U.)

474. Original vouchers in support of a State war claim will be required even where the State law prohibits the taking of such originals from the files of the State. The general rule of law that a copy of a record, duly certified by the lawful custodian of the original, may be used in evidence is not practically applicable where proof of the execution of the original is a preliminary requisite.—*February* 12, 1881, Vol. 43, p. 569. (U.)

475. Evidence in contradiction of the records of the War Department will not be considered by the accounting officers; but parol testimony will be accepted to establish the circumstances under which a disability which caused discharge arose, whenever the point is material and the record is silent or incomplete.—*June* 14, 1881, Vol 44, p. 194; *June* 24, 1882, Vol. 45, p 678. (U.)

476. *A farmer in charge* is not a responsible or bonded officer of the United States; hence, his *certificate* cannot be accepted as evidence in support of a claim against the Government.—*July* 5, 12, and 16, 1881, Vol. 44, pp. 253–254, 272, 296–298. (U.)

EXAMINATIONS.

See Jurisdiction, 654; Mileage, 699, 711; Pay and Allowances, 935–937.

EXECUTORS—ADMINISTRATORS.

See, also, Attorneys, 90; Bonds, 98; Bounty, 186, 219, 229-230; Checks, 249; Contracts, 349, 367, 369; Deceased Civilian Employees, 383; Department Practice, 400; Evidence, 473; Indian Affairs, 567; Loyalty, 673.

477. Although an executor or administrator cannot sue in a foreign court by virtue of his original letters, yet he may lawfully receive a debt voluntarily paid and give a valid acquittance.—*May* 31, 1870, Vol. 33, p. 154 (B.); Doolittle *v.* Lewis, 7 Johns. Ch., 9; Shultz *v.* Pulver, 3 Paige, 182; Hooker *v.* Olmstead, 6 Pick., 481.

478. In application of this principle (see preceding section) it was held, in a claim for arrears of pay and bounty to the minor children of a deceased soldier, that although the original letters of guardianship had been taken out in Philadelphia, and the guardian had since removed to New York City, and one of the wards was living in Iowa, payment might, nevertheless, be made to the guardian, and that his receipt would be valid.—*May* 31, 1870, Vol. 33, p. 154. (B.)

479. No money will be paid to any person claiming as executor or administrator unless he shall produce and file his original letters testamentary or of administration, or a properly certified copy thereof, or a certificate of the proper court that he is duly appointed or qualified as such.—*March* 9, 1876, Vol. 37, pp. 522–523. (B.) See, also, Vol. 40 p. 607, *November* 4, 1878. (U.)

480. Where letters of administration fail to show upon their face that the decedent died in the county in which they were issued, or that he was an inhabitant of that county immediately previous to his death,

and are indefinite as to whether decedent had property in that county at the time of his decease: *Held*, that no presumption of jurisdiction arises from the letters, and that they are not sufficient authority to justify payment to the individual named as administrator.—*January* 30, 1878, Vol. 39, pp. 618–621. (U.)

481. Where the relationship of a claimant to the intestate is remote, letters of administration are, as a rule, required; but this rule is not always enforced when the balance due is not large.—*September* 7, 1880, Vol. 43, p. 208. (U.)

482. Where the amount due the deceased is small and the debt undoubted, creditors have not always been put to the expense of taking out letters of administration.—*April* 4, 1878, Vol. 40, p. 105. Nor have heirs-at-law.—*May* 7, 1881, Vol. 44, p. 75. (U.)

483. For any claim less than one hundred dollars, the necessity of taking out letters of administration may be waived, provided satisfactory evidence of the right of claimant is filed.—*April* 7, 1879, Vol. 41, p. 293; *June* 19, 1883, Vol. 47, pp. 390–391. (U.)

484. Letters testamentary or of administration, obtained in either of the States or Territories of this Union, give a right to the person having them to receive and give discharges for assets which may be in the hands of any person within the District of Columbia, and a right to receive from the Government, either in the District or in the State where letters have been granted, any sum of money which the Government may owe to the estate, whether it was due prior to the death of the decedent or became due thereafter.—*May* 6, 1879, Vol. 41, p. 382 (U.); Kane *v.* Paul, 14 Peters, 41.

485. When that which belongs to a seaman's estate is paid to his widow or heir without the expense of administration, it is upon the ground that the law does not require a vain thing nor regard trifles; and when payment is denied to the administrator, the true ground of the denial is a suspicion of unfairness and not a lack of right in a duly-appointed and *bona fide* administrator to receive payment.—*May* 6, 1879, Vol. 41, p. 380; *February* 12, 1880, Vol. 42, p. 355. (U.)

486. To entitle an administrator, as such, to receive payment, it must appear affirmatively either that the last place of residence of the decedent was within the jurisdiction of the court making the appointment, or that the death occurred in that jurisdiction, or that there is property belonging to the decedent's estate within the jurisdiction. It must also appear that the administrator has been duly appointed by a competent court, and that he has lawfully entered upon the duties of the office. The accounting officers will not state a balance in favor of an administrator while there is reason to suspect an intent on his part to dissipate or defraud the estate.—*February* 12, 1880, Vol. 42, p. 357. (U.)

487. The right of an heir, executor, or administrator to have an account stated in his favor is a matter quite distinct from his right to demand payment from a disbursing officer. In the latter case, the authority to pay is controlled by regulation; in the former, the powers of the accounting officers depend upon the legal rights of the claimant, and whatever the latter could recover, if the case were heard in court, he should be able to recover in the Departments.—*February* 12, 1880, Vol. 42, pp. 354–355. (U.)

488. In payments of magnitude it is not sufficient for the claimant to produce evidence that she is the widow and only heir of the deceased. Payments in such cases will only be made to a duly authorized executor or administrator. (See section 842 of Digest of 1869.)—*January* 3, 1883, Vol. 46, pp. 549–551. (U.)

489. A claimant filed letters of administration, granted by the surrogate court of the county of New York, upon an estate of considerable value of a deceased officer of the Regular Army, and deposed that she, a niece, was the only relative entitled to the decedent's estate. The court evidently had jurisdiction to grant the letters; and letters granted by any officer having jurisdiction are made by the statutes of New York conclusive evidence of the authority of the persons to whom they are granted, until they are reversed on appeal or revoked as provided by law. But, as it appeared probable to the accounting officers, from certain papers in the claim, that there were living in Ireland other near relatives of the deceased, and as there was nothing to show that notice of the application for letters had been given to the other persons interested in the estate, and as certain of the representations on which the letters were granted were probably false in fact, though perhaps made by mistake, and as the surrogate has power to revoke letters granted on false representations: *Held*, that the case should be suspended for evidence showing that the court having jurisdiction has been fully apprised of the value of the estate.—*March* 25, 1882, Vol. 45, pp. 368–369. (U.)

490. The court of probate having jurisdiction to issue letters of administration, is the ultimate authority for determining the amount of bonds necessary

to protect parties interested in the estate; and, in cases where letters have been duly and regularly issued, and the court, with knowledge of the amount of the assets and the condition of the estate, approves the sufficiency of the bond, the law rests the matter on the decision of the court. But where there is reason to doubt whether the amount of the assets were known to the court, it is the practice to delay action on the account until the doubt is removed or until a bond is filed in the court satisfactory to the accounting officers and in double the amount of the claim. Where, however, an administratrix gave bond in the sum of four thousand dollars, and the amount of the claim was four thousand three hundred and sixty-five dollars and fifty-eight cents, but it appeared that on final distribution in the probate court said administratrix would be entitled in her own right to one-half the personal estate, so that the part of the claim which would inure to others was but little greater than half the penalty named in the bond: *Held*, that settlement of the claim should not be delayed on the ground of insufficiency of the bond.—*April* 4, 1883, Vol. 47, pp. 161–162. (U.)

EXTRA COMPENSATION.

See, also, Contracts, 320, 324, 331, 333, 343; Indian Agents, 598, 601; Pay and Allowances, 834; Pension Agents, 1011.

491. A clerk already in the employ of the Government is debarred from receiving any additional pay for extra service by the positive prohibition of section

2 of the act of August 23, 1842, (5 Stat., 510, sec. 1765, Rev. Stat.)—*May* 22, 1871, Vol. 34, p. 7 (B); *January* 29, 1883, Vol. 46, pp. 643–644. (U.)

492. As the pay of agents employed by the Commissioner of the Bureau of Refugees, Freedmen and Abandoned Lands was fixed by the Commissioner, in his discretion, and not by law or regulations, section 12 of the act of August 23, 1842, (5 Stat., 525,) which forbids an allowance to clerks or officers for extra services, does not apply to them. The same authority that determined the amount of pay to be received by these agents, originally, had the right to change the rate or to pay for extra services.—*November* 10, 1874, Vol. 36, pp. 284–285. (B.)

493. A person holding two compatible offices or employments under Government is not precluded from receiving the salaries of both; but the prohibitions of sections 1764–1765, Rev. Stat., extend to every case where the duties for which extra compensation is claimed are performed without a regular appointment authorized by law.—*November* 3, 1875, Vol. 37, p. 212 (B.); 9 Opin., 508.

494. The act of July 12, 1870, section 4, (16 Stat., 250,) which repealed all acts and joint resolutions granting extra pay, did not affect the rights already acquired under the joint resolution of February 28, 1867, (14 Stat., 569,) granting extra pay to certain civil officers therein specified. (See Twenty per cent. cases, 13 Wall., 576; 20 Wall., 179.)—*December* 27, 1881, Vol 45, pp. 55–57. (U.)

EXTRA DUTY.

See Claims, 270; Deserters, 417.

FEES—CHARGES.

See Agents, 21; Artificial Limbs, 58; Attorneys, 83–90; Notaries Public, 723, 725–726; Oaths and Affidavits, 726; Pensions, 995; Pension Agents, 1014.

FIRE.

See, also, Railroads, 1050–1051; Vessels, Lost or Destroyed, 1189.

495. Where the bill of lading obligated the carrier (the steamer Southwestern) to deliver the freight in good order and condition, "dangers of the sea only excepted": *Held*, that fire, originating on board, was not one of the dangers of the sea within the exception.—*May* 19, 1874, Vol. 36, pp. 53–54. (B.)

FORAGE.

See, also, Horses, 554.

495½. An officer of the Army, while temporarily serving as a signal officer, may be furnished by the Quartermaster's Department with forage in kind for

the number of horses allowed by existing laws and regulations to mounted officers of the same grade, and actually kept in service at the place where he is on duty.*—*March* 12, 1877, Vol. 38, pp. 625–626. (C.)

496. Where a claim was made by an Army officer for forage due and not received in money or kind, while such officer was on duty as an additional paymaster from July 1, 1862, to April 8, 1867: *Held*, that as the officer did not accept his appointment until July 20, 1862, he was not entitled to commutation of forage for any time prior to that date: *Held*, further, that as he had not shown that he kept horses at the places where he was on duty, or that forage in kind was not, and could not have been, furnished by the proper department as required by the act of July 17, 1862, (12 Stat., 594,) and General Orders No. 132, Adjutant-General's Office, of 1862, the officer had failed to establish any right to commutation for any part of the period.—*February* 9, 1880, Vol. 42, p. 341. (U.)

497. The proviso in relation to forage for officers' horses, in the act of February 24, 1881, (21 Stat., 347,) took effect immediately upon passage of the act—*March* 16, 1881, Vol. 43, pp. 641–642. (U.)

498. Where an officer, who was entitled to forage in kind during a certain month, made no requisition therefor until the 28th of said month, but it appeared that the post quartermaster had no means of furnishing forage at any time during the month: *Held*, that the officer was entitled to commutation therefor.—*May* 11, 1881, Vol. 44, pp. 91–92. (U.)

*By section 8 of the Army appropriation act of June 18, 1878, (20 Stat., 150,) it is provided that forage in kind may be furnished to officers of the Army only for horses *owned* by them as well as actually kept in service.

499. An engineer officer engaged in superintending the construction and renovation of light-houses, pursuant to section 4664, Rev. Stat., is in the performance of "official military duty" at a "military post," within the meaning of section 8 of the Army appropriation act of June 18, 1878, (20 Stat., 150,) as amended by the fourth proviso of the act of February 24, 1881, (21 Stat., 347,) and is, therefore, entitled to forage.—*June* 2, 1881, Vol. 44, pp. 153–154. (U.)

FORFEITURES.

See Bounty, 204; Courts-Martial, 373–375, 377–379; Deserters, 414, 422; Pay and Allowances, 771, 836, 884.

FORGERY.

See, also, Disbursing Officers, 424, 429; Railroads, 1048.

500. Where an agent or attorney in whose care a claimant's check is sent, forges the name of the claimant, and the check is thereupon cashed at a bank and duly paid by the Government, the claimant's remedy is against the bank or the attorney. This office has no control over the matter.—*September* 13 and *October* 5, 1869, Vol. 32, pp. 443, 467; see, also, pp. 497–498; *October* 27, 1869. (B.)

501. Where the first instalment of pension due on the certificate of a pensioner was collected fraudulently by another, on vouchers executed by the latter, upon

which he had forged the signatures of the pensioner: *Held*, that the amount due on the certificate might be paid to the *bona fide* claimant upon positive proof of her identity.—*April* 11, 1870, Vol. 33, pp. 89–90. (B.)

502. Where a fraud on the Government was committed by the "raising" of the amount named in a certificate given to a soldier at his final discharge, and it appeared that the certifying officer had afforded opportunity for the perpetration of the fraud, although without any fraudulent intent, by leaving such blank spaces in the certificate as to enable the forger to insert without difficulty the words "one hundred and" before the word "seventy," and the figure "1" before the figures "$79\frac{47}{100}$:" *Held*, that the officer was responsible for the overpayment made upon the certificate.—*August* 6, 1878, Vol. 40, pp. 410–411 (U.); 2 Parsons on Notes and Bills, 597.

FRAUD.

See, also, Attorneys, 72, 78; Department Practice, 397; Executors and Administrators, 485–486; Forgery, 502.

503. Where a soldier fraudulently collected money from the Government upon a forged signature, and died before making restitution thereof: *Held*, that the Government had an undoubted right to recover from his estate the sum so wrongfully obtained by retaining and applying towards the extinguishment of the debt any balance in its hands belonging to the estate.—*May* 17, 1877, Vol. 39, p. 77 (C.); 15 Peters, 336.

FREEDMEN'S BUREAU.

See Accounting Officers, 9; Bounty, 139; Extra Compensation, 492.

FREIGHT.

See, also, Fire, 495.

504. Freight is due upon all goods delivered by vessels, even though said goods may have been damaged by transportation, if no fault is attributable to the ship or its officers. If there is no delivery of the goods, then no claim for freight can be admitted.—*March* 31, 1870, Vol. 33, pp. 72–73. (B.)

505. In the absence of express stipulations to the contrary, the rule is that when a deficiency occurs from ordinary shrinkage and wastage the freighter has no claim on the carrier for the loss, nor the carrier on the freighter for freight.—*April* 4, 1870, Vol. 33, pp. 78–79. (B.)

FUEL AND QUARTERS.

See, also, Construction of Statutes, 311, 315; Evidence, 472; Jurisdiction, 644; Rations, 1072; Servants, 1100.

506. Suspension from rank merely does not debar an officer from the allowance of fuel to which he would otherwise be entitled; such suspension only affects the officer's military status.—*January* 14, 1869, Vol. 32, pp. 29–33 (B.); 4 Opin., 445, 607; 6 Opin., 200.

507. Under the appropriation act of July 15, 1870, (16 Stat, 315,) marine officers on shipboard are not entitled to commutation of quarters.—*September* 24 and *October* 6, 1870, Vol. 33, pp. 265, 281. (B.)

508. Payment of money in lieu of quarters is prohibited by the act of July 15, 1870, (16 Stat., 320.)—*September* 9, 1870, Vol. 33, p. 256. (B.)

509. Where an officer was court-martialed and sentenced to be cashiered, but the sentence was afterwards remitted and the officer mustered out as of date of January 31, 1867: *Held*, that though entitled to pay while awaiting the result of his trial, he was not entitled to commutation of fuel and quarters; that pay is the adjunct of an officer's rank and office, but that fuel and quarters depend upon conditions of service and duty, and are to be determined by the fact of the fulfilment or non-fulfilment of these conditions.—*December* 12, 1870, Vol. 33, pp. 384–385. (B.)

510. Under the Army appropriation act of July 15, 1870, (16 Stat. 320,) an officer has nothing to do with the rent of his quarters; they are to be provided in kind by the Quartermaster's Department, either in buildings owned by the United States or by rooms rented for the officer's occupation. If the officer is absent on leave for more than thirty days he loses all claim to the quarters previously occupied by him, and the Quartermaster's Department may reassign them, or may surrender them if rented, without let or hindrance from the officer, and without any infringement of his legal rights.—*August* 3, 1871, Vol 34, pp. 127–128 (B.); *February* 19, 1873, Vol. 35, pp. 172–173. (U.)

511. Section 24 of the act of July 15, 1870, (16 Stat., 320,) abolished all commutations and provided

no relief, by way of commutation or reimbursement, to an officer failing to secure public quarters which he was entitled to have assigned to him.—*November* 6, 1871, Vol. 34, p. 218 (B.); *January* 28 and *May* 7, 1879, Vol. 41, pp. 77, 396 (U.)

512. Under section 11 of the act of June 20, 1864, (13 Stat., 145,) an officer, who was on leave of absence from a post at which he was on such duty as entitled him to fuel and quarters, was theoretically still on duty at that post for a period of thirty days, and, therefore, entitled to the full allowances for fuel and quarters at the rates established at that post, provided such absence did not exceed thirty days in any one year. Where his absence exceeded thirty days, and, at the expiration thereof, he returned, under proper orders, to the same station from which he took advantage of his leave, he became entitled, under the act of March 3, 1863; (12 Stat., 736, section 31,) to half the allowances for fuel and quarters for the period in excess of thirty days in any one year; but in case he did not return to his regular station, he was not entitled to any allowance for fuel and quarters after the expiration of a thirty days' leave.—*April* 15, 1871, Vol. 34, p. 129. (B.)

513. By the appropriation act of July 15, 1870, (16 Stat., 315,) the quartermaster of the Marine Corps is charged with the duty of furnishing the officers and men of the corps with the fuel in kind to which they are entitled. The Government specified a certain place where the officers of the corps are respectively to perform duty, and at that place or station it furnishes the necessary supplies; but it is not required by any law or regulation to pay for transporting its supplies elsewhere, for the personal convenience of

the officers. The liberality of the Government in permitting an officer to reside at a distance from his immediate post of duty carries with it no obligation to transport his fuel to his residence at the expense of the United States.—*November* 6, 1871, Vol. 34, pp. 218–219. (B.)

514. When chaplains assigned to hospitals, posts, and forts do not receive quarters and fuel in kind, they are not entitled to commutation thereof.—*April* 10, 1874, Vol. 36, pp. 3–4. (B.)

515. Prior to July 1, 1870, commutation of fuel and quarters was not allowed to officers waiting orders, even though they were entitled to full pay, except in cases where the Secretary of War had made an order authorizing payment and specifying the amount. By the act of July 15, 1870, (16 Stat., 320,) all commutation of fuel and quarters was abolished.—*July* 16, 1875, Vol. 37, p. 13 (B.); *April* 30, 1877, Vol. 39, pp. 30–31 (C.); *November* 15, and *December* 6, 1877; *Ibid.*, pp. 464–465, 500–501. (U.)

516. In no sense can an officer, detained at a point upon the route of his travel, awaiting transportation, be said to be placed on duty at that point, under paragraph 1086 of the Army Regulations of 1863. By the reimbursement of an officer's hotel bills, when he is so detained, as a part of his "actual traveling expenses," it may be said that he has already been furnished with quarters and fuel in kind, and he can have no further claim upon the Government therefor during his detention.—*September* 17, 1875, Vol. 37, pp. 118–119. (B.)

517. Hereafter a special decision of the Secretary of War will be required allowing to an officer, while

at Washington settling his accounts, fuel, quarters, or forage, in kind. This is a military question.—*October* 6, 1875, Vol. 37, pp. 134–135. (B.)

518. In a claim for additional allowance of commutation of quarters and fuel while claimant was on duty as hospital steward in 1865, being for the difference in the commutation rates allowed at Louisville, Ky., and Washington, D. C., it was held that the fact that allowances had been made in certain cited cases, under an erroneous interpretation of the law and regulations, afforded no valid reason for granting an allowance in a similar case. Unwarranted precedents should not be followed.—*February* 24, 1876, Vol. 37, pp. 465–471. (B.)

519. Fuel and quarters are not allowed at any other point than the officer's proper station —*January* 27, 1877, Vol. 38, p. 508 (C.); *April* 1, 1878, Vol. 40, p. 95; *February* 13, 1882, Vol. 45, pp. 227–228. (U.)

520. An officer is not entitled to an allowance for fuel and quarters during a leave of absence allowed in pursuance of the act of July 29, 1876, authorizing cumulative leave, (16 Stat., 102,) if at the time the leave was granted he was not in a situation that entitled him to quarters.—*May* 7, 1878, Vol. 40, p. 179; *March* 6, 1882, Vol. 45, p. 299. (U.)

521. Section 9 of the act of June 18, 1878, allowing commutation of quarters, (20 Stat., 151,) does not change the mode of paying expenses incurred in furnishing quarters in kind authorized by section 24 of the act of July 15, 1870, (16 Stat., 320,) and section 1270, Rev. Stat., nor does it create any necessity for departing from the rule stated in section 1789 of the Comptroller's Digest of 1869, in cases where quarters in kind are furnished by the Quartermaster's

Department.—*August* 23, 1878, Vol. 40, pp. 442–443. (U.)

522. Commutation for quarters is now authorized solely by section 9 of the act of June 18, 1878, (20 Stat., 151,) and must be paid by the Pay Department.—*August* 23, 1878, Vol. 40, p. 443. (U.)

523. An officer is not entitled to reimbursement of money expended by him for fuel and quarters while on leave of absence.—*January* 28, 1879, Vol. 41, pp. 77–80. Nor for rent of quarters while on sick leave.—*May* 7, 1879, Vol. 41, pp. 396–398. (U.)

524. Rooms for engineer officers engaged upon civil works can be furnished without the intervention of the Quartermaster's Department only in cases where the expense of furnishing them is directly authorized by the act making appropriation for the works, or is a necessary incidental expense of the work. Rooms so furnished cannot be considered as quarters within the meaning of the act of July 15, 1870, (16 Stat., 320, section 24,) or the act of June 18, 1878, (20 Stat., 151.)—*September* 20, 1878, Vol. 40, pp. 510–511; *October* 11, 1880, Vol. 43, pp. 284–285. Or by the act of June 23, 1879, (21 Stat., 30.)—*April* 9, 1880, Vol. 42, pp. 523–525. (U.)

525. The act of July 29, 1876, relative to cumulative leave, (19 Stat., 102,) read in connection with the act of July 15, 1870, (16 Stat.,320,) continued to officers upon leave, quarters in kind, but did not allow commutation therefor.—*May* 7, 1879, Vol. 41, pp. 397–398; *May* 22, 1882, Vol. 45, pp. 562–563 (U.); 16 Opin., 619.

526. The provision of the Army appropriation act of June 23, 1879, (21 Stat., 30,) prohibiting commutation to officers for servants' quarters and allowing

$12 per month to officers for commutation of quarters at places where there are no public quarters, went into effect at the date of the approval of the act, to wit, on June 23, 1879.—*June* 28, 1879, Vol. 41, p. 528. (U.)

527. Quarters in kind must be furnished by the Quartermaster's Department.—*September* 20, 1878, Vol. 40, p. 510; *March* 27, 1880, Vol. 42, pp. 408–409. (U.)

528. Commutation of quarters is not allowable to an officer while on leave of absence.—*December* 8, 1879, Vol. 42, pp. 163–166; *November* 6, 1880, Vol. 43, pp. 315–318; *May* 22, 1882, Vol. 45, pp. 562–563 (U.); 16 Opin., 619.

529. Nor to one not actually engaged in the public service, unless by virtue of some special and exceptional provision of law taking his case out of the general rule.—*December* 8, 1879, Vol. 42, pp. 163–164 (U.); United States *v.* Phisterer, 4 Otto, 219.

The words "without deduction of pay or allowance," in the act of July 29, 1876, in regard to cumulative leave, (19 Stat., 102,) do not create such an exception.—*December* 8, 1879, Vol. 42, pp. 163–168. (U.)

530. The action of the Quartermaster's Department, disallowing quarters in kind, is conclusive upon the accounting officers, and it is not in the power of the latter to allow a pecuniary consideration to an officer for the loss or injury suffered by him because of such disallowance, even if the refusal of quarters was erroneous.—*November* 6, 1871, Vol. 34, p. 218 (B.); *January* 28, 1879, Vol. 41, p. 77; *November* 11 and *December* 18, 1879, and *February* 28 and *March* 19, 1880, Vol. 42, pp. 108–109, 198, 407–414, 472. (U.)

531. A vessel in commission is not a "post" or "station" in the military sense of those terms, and an officer of the Marine Corps, while temporarily deprived of his quarters on such vessel, is not entitled to commutation therefor.—*May* 12, 1880, Vol. 42, pp. 613–614. (U.)

532. Paragraph 1068 of the Army Regulations of 1863 authorizes commutation of fuel on a coal basis.—*March* 31, 1881, Vol. 43, pp. 674–675. (U.)

533. A certificate of a quartermaster is not the only evidence that is admissible in proof of the fact that there are no public quarters at a given post.—*January* 6, 1881, Vol. 43, p. 475. (U.)

534. The right to commutation of quarters depends solely on the fact of the officer being on duty at a post or station where there are no public quarters.—*April* 20, 1880, Vol. 42, pp. 551–552; *October* 11, 1880, Vol. 43, p. 286. Or where there is an insufficiency thereof. In the latter case, the requirements of Paragraph II of General Orders No. 66, Adjutant-General's Office, of 1878, must be complied with.—*January* 6, 1881, Vol. 43, p. 475; *March* 6, 1882, Vol. 45, p. 299. (U.)

535. An officer on cumulative leave who, prior to leave had quarters in kind which he vacated before leaving and which were taken into the possession of the Quartermaster's Department, is not entitled to commutation therefor.—*April* 20, 1881, Vol. 44, pp. 18–20 (U.); Opinion of Attorney-General, *February* 21, 1881.

536. An officer is not entitled to commutation of quarters while on sick leave.—*April* 21, 1881, Vol. 44, pp. 22–24. (U.)

537. Commutation of fuel and quarters should not be denied to an officer who has been absent from his station on duty, merely because his absence exceeded thirty days.*—*April* 21, 1881, Vol. 44, pp. 24–26 (U.)

538. An officer on leave, who was not entitled to commutation of quarters when his leave began, but who was on temporary duty during a portion of his leave, is entitled to commutation during the period of temporary duty; provided, that such duty was performed at a post or station where there were no public quarters which could have been assigned to him; and, provided also, that his quarters at his permanent station had been previously vacated *bona fide*. The burden of proof rests upon an officer, claiming commutation while on temporary duty, to show actual and *bona fide* vacation of quarters at his permanent station.—*March* 6, 1882, Vol. 45, pp. 300–301. (U.)

539. An officer who was absent from his station, serving as a member of a general court-martial, is not entitled to commutation of quarters for the period of such absence, if he was at the same time furnished with quarters in kind at his permanent station.—*March* 14, 1882, Vol. 45, p. 333. See, also, *Ibid.*, p. 337; *April* 12, 1883, Vol. 47, p. 179. (U.)

540. An officer cannot have both quarters in kind and commutation therefor for the same period. (See 20 Stat., 151; also, paragraphs 1080–1081, and form 21, page 194, Army Regulations of 1863, and Army Regulations of 1881, paragraphs 1844, 2441.)—*March* 6, 1882, Vol. 45, pp. 300–301; *November* 4, 1882, Vol. 46, pp. 392–393; *March* 26, 1883, Vol. 47, pp. 139–141; *December* 17, 1883, Vol. 48, pp. 209–211, 218–

* Overruling, in part, section 1783 of Digest of 1869.

220, 220–222 (U.); G. O. No. 76, A. G. O. of 1869; G. O. No. 3, A. G. O. of 1880.

541. In a claim by an Army officer for commutation of quarters, a voucher which does not affirmatively show that the officer was not furnished with quarters in kind during the period for which commutation is claimed is fatally defective, and the Secretary of War cannot, by pronouncing the voucher sufficient and directing payment of commutation, cure the defect. An officer's right to commutation becomes fixed at the end of the period for which the commutation is claimed, and is in no way dependent upon any subsequent action or order.—*November* 4, 1882; Vol. 46, p. 392; *March* 26, 1883, Vol. 47, pp. 139–141. (U.) And see Mileage, secs. 710, 715, *post.*

542. An officer discharging his official duties as engineer in charge of civil works at a place where there are no public quarters, and who is not furnished with rooms to be occupied by him as quarters, is entitled to commutation therefor.—*May* 12, 1881, Vol. 44, p. 99. (U.)

543. Commutation of quarters cannot be allowed to officers of the marine corps "while serving with troops."—*April* 7, 1884, Vol. 48, p. 568. (U.)

FUNERAL EXPENSES.*

SEE, ALSO, PENSIONS, 980, 1001, 1005.

544. Funeral expenses are, from their nature, usually preferred before other debts, and payment has been

* For a statement and review of the legislation upon this subject, see Vol. 42, pp. 518–521.

authorized by the accounting officers upon presentation of the bill alone.—*April* 4, 1878, Vol. 40, p. 105. (U.)

545. A claim for expenses incurred in the burial of the late Capt. A. Nesmit Lee, United States Army, who died in 1880, at Louisville, Ky., while superintending the Portland Canal, was endorsed by the Secretary of War, "Approved for payment:" *Held*, that under the act of June 23, 1879, (21 Stat., 32,) which appropriates for "expenses of the interment of officers killed in action or who die when on duty in the field or at posts on the frontiers or when traveling on orders, and of non-commissioned officers and soldiers," the claim could not be allowed.—*April* 7, 1880, Vol. 42, pp. 518–521. (U.)

546. *Semble*, that the United States Government is not legally liable for funeral expenses of a naval officer. Where such officer dies abroad, a due regard for national honor may require such expenses to be incurred by the Government; but when the death occurs in the United States, the rules of the Navy Department prescribe that if the "effects left by the deceased are insufficient, the propriety of making an allowance will be considered upon representation to the Fourth Auditor. When sufficient effects or credits are not found at the place of decease, but are known to exist elsewhere, the allowance may be made and charged to the officer's estate in his account."—*December* 23, 1868, and *July* 12, 1869, Vol. 32, pp. 11, 345 (B.); General Order of the Navy Department No. 76, of July 7, 1866; Rules of the Navy Department of March 1832, p. 14.

547. In settling accounts for the expenses of the interment of officers dying at frontier posts, a subse-

quent approval by the Secretary of War of the vouchers therefor will be accepted as sufficient in cases where the death of the officer occurred at points so remote from telegraph lines as to make it impracticable to obtain the necessary order of the Secretary before burial.—*December* 21, 1872, Vol. 35, p. 109. (B.)

FURLOUGH.

548. A furlough granted after the date of an officer's discharge does not restore him to service nor prejudice his claim for travelling allowances.—*February* 23, 1881, Vol. 43, p. 593. (U.)

GARNISHMENT.

See Attachment, 71.

GENERAL AVERAGE.

549. The steamer Liberty left the port of Baltimore May 1, 1869, bound for the port of New Orleans *via* Havana. A portion of the cargo, valued at thirty-five thousand one hundred and fifty-five dollars, was shipped on Government account. On the fifth of May

the steamer's propeller dropped off, in consequence of which she was obliged to seek a port at which to make repairs. She bore away under sail for Savannah, and from that port was towed to Baltimore, where the cargo was unloaded and repairs were made. A claim was presented for expenses assessed in general average upon the stores belonging to the United States Quartermaster's Department and upon two horses belonging to Surgeon Edwards, United States Army: *Held*, that as the steamer did not meet with the injury complained of in consequence of a sea peril, but by reason of the ordinary action of the elements, those expenses only are general average which were incurred on account of measures taken to avert a danger threatening the whole concern; that the port of refuge (Savannah) was the place where the cargo should have been unladen, and that the voyage from Savannah to Baltimore was undertaken for the benefit of the vessel only; that consequently the expenses of that voyage were not properly assessable in general average: *Held, further*, that the Government was not liable for the contributory interest of the two horses of Surgeon Edwards, since the United States, while undertaking to transport the horses, did not thereby incur the obligation of an insurer, but rather that of a bailee without hire.—*March* 17, 1870, Vol. 33, pp. 56–59 (B.); Benecke on Marine Insurance, p. 139; 2 Phillips on Insurance, p. 119.

550. The chartered schooner John N. Gennin, loaded with quartermaster's stores, upon arrival off the bar at the mouth of the Saint John's River, Florida, in the afternoon of January 25, 1865, signaled for a pilot, but none coming out, she laid off and on, near the light-house at the entrance, until about midnight,

when she grounded, and, springing a leak, was compelled to jettison a portion of her cargo. Another portion was badly damaged. When she stranded, the copper was torn off from her bottom and keel, thus exposing the wood to the action of the worms, and as there were no facilities on that coast for hauling out and recoppering, the owner asked for the discharge of his vessel in order that he might sail north for repairs. His request was refused by the military authorities, who retained the schooner in the United States service until November 24, 1865, with a resultant damage to her on account of the action of the worms: *Held*, that the course adopted by the master of the vessel of standing off and on while waiting for a pilot was the proper course; that the stranding was accidental, but that the damage to the vessel caused thereby should be borne by her owners alone as a partial loss; that the loss of the public property cast overboard as well as the loss upon that portion saved in a damaged condition should be borne in general average; that the rule in such case is as follows: "As the full value of what would have contributed, if all had been saved, is to the part actually saved (deducting expenses,) so is the full value of the sacrificed articles to the indemnification to which the proprietor of the goods is entitled after the misfortune"; that the United States was liable for the injury resulting to the vessel from worms in consequence of her detention in the service.—*December* 6, 1871, Vol. 34, pp. 252–256 (B.); Stevens and Benecke on Marine Insurance, p. 233.

551. The United States contributes to general average the same as individuals; but there is no law or custom that warrants the giving of a bond on the part

of the Government for the payment of its proportion of the contribution. Where a claim exists against the United States for its share of general average the claimant should file the proper papers and proofs, and the settlement should follow the usual course.—*January* 31, 1873, Vol. 35, pp. 154–155. (B.)

GOVERNMENT EMPLOYEES.

See Attorneys, 92; Claims, 260; Compensation, 296; Contracts, 325; Extra Compensation, 491; Indian Affairs, 573, 575; Notaries Public, 725; Oaths and Affidavits, 726; Travelling Expenses, 1168; Witnesses, 1210.

GUARDIANS—GUARDIANSHIP.

See Claims, 268; Evidence, 469–471; Executors and Administrators, 478; Indian Affairs, 564, 567, 570; Pensions, 977, 985, 992, 998–999, 1004, 1006; Set-off, 1109.

HEIRS—STATUTORY SUCCESSORS.

See Artificial Limbs, 57; Bounty, 116, 118, 137, 142, 146, 159, 184, 187, 189, 197, 201, 205, 210, 219, 222–223, 228–230; Checks, 247; Claims, 259, 268, 286; Colored Soldiers, 294; Executors and Administrators, 485, 487–488; Loyalty, 675; Pay and Allowances, 776, 880, 883.

HOLDER AND OWNER.

See Vouchers, 1195, 1198.

HORSES.

SEE, ALSO, DEPARTMENT PRACTICE, 385; DESERTERS, 418; EVIDENCE, 465; FORAGE, 495–499; LOYALTY, 674; RENT, 1087.

552. The provisions of section 5 of the act of July 22, 1861, (12 Stat., 269,) apply to all company officers of volunteer cavalry who "have been, or may be, accepted into the service of the United States for a period not less than six months." They are, therefore, retroactive, and relate back to the beginning of the war. Each officer is entitled to an allowance of forty cents a day for use and risk of *only one* horse and equipments, which must have been *his own.* No proportionate amount can be allowed when the requirements of the law and of the regulations arising under it are only partially complied with; and no payment should be made unless evidence is furnished from the War Department showing the officer's horse and horse equipments to have been properly mustered as his own property.—*November* 30, 1870, Vol. 33, pp. 364–366. (B.)

553. An officer who serves as, and receives the extra pay of an aid-de-camp is not entitled to pay for use and risk of horse.—*October* 13, 1871, Vol. 34, p. 197. (B.)

554. In all claims for loss of private horses by reason of insufficiency of forage, it should be shown, in substantiation of the claim, that public horses died at the same time and place from the same cause.—*January* 27, 1873, Vol. 35, p. 148. (B.)

555. Claims for horses lost in the military service, where such horses were in service simply as a part of the equipment belonging to, and furnished by an officer or soldier, are allowable only under section 1 of the

act of March 3, 1849, (section 3482, Rev. Stat.) But where the horses were in service by impressment, (as, for instance, where the horse of an officer was, during its owner's absence from his regiment, taken by order of the colonel and used in the service without the knowledge or consent of the officer,) then such claims are allowable under section 2 of the said act, (Rev. Stat., section 3483,) which contains no restriction as to persons, but includes officers and soldiers as well as civilians.—*December* 12, 1873, Vol. 35, p. 532; *April* 7, 1874, *Ibid.*, p. 698 (B.); 14 Opin., 360, 367.

556. There is no law authorizing allowance of a claim for a horse furnished to a soldier by a citizen of an insurrectionary State.—*December* 9, 1880, Vol. 43, p. 394. (U.)

IMPRESSMENT.

SEE, ALSO, HORSES, 555.

557. As to what constitutes impressment, see Vol. 38, pp. 547–552, 561–564; 10 Opin., 24. See, also, section 560, *post.*

558. The steamer Forest Queen was seized and turned over to the Quartermaster's Department in 1863 for alleged violation of an order of General Grant, prohibiting trading and trafficking on the Mississippi below Memphis. She was subsequently used and employed by the Quartermaster's Department, and was finally lost while in the military service of the United States. On March 4, 1870, the Secretary of War decided that the original seizure and conversion

to Government use of the steamer was not justified by the facts, and the order under which she was turned over to the Quartermaster's Department was revoked: *Held*, that the seizure of the steamer was, under the circumstances, an "impressment," and that her owners were entitled to be paid for her services and for her value under the act of March 3, 1849, (section 3483, Rev. Stat.)—*May* 27, 1870, Vol. 33, pp. 144–150. (B.)

559. General Prentiss, upon assuming command of the United States military forces at Cairo, in April, 1861, found claimant's boat, the B. P. Cheney, engaged in legitimate traffic down the Mississippi. Desiring to obtain information of the enemy's movements, he peremptorily ordered her to continue in service, in spite of the protest of her master. While thus serving, in obeedince to said order, she was captured by the rebels: *Held*, that she was in the military service by "impressment," and that her owner was entitled to be paid her full value.—*June* 2, 1877, Vol. 39, pp. 124–126. (C.)

560. Moral coercion, as it is termed, is not sufficient to constitute an impressment under the statute; there must be the physical act of force.—*April* 7, 1873, Vol. 35, p. 252 (B.); U. S. *v.* Reed, 11 Wall., 591; Case of C. A. Perry & Co., 14 Opin., 137.

INDEBTEDNESS.

SEE, ALSO, SET-OFF, 1105.

561. An indebtedness left by an out-going officer becomes a claim to be settled in the Treasury De-

partment, and not a current expense to be paid by his successor in office.—*September* 30, 1880, Vol. 43, p. 269. (U.)

562. Where the evidence before the accounting officers is sufficient to make it probable that an Army officer has appropriated Government property to his own use, in building and repairs done upon his private residence, in amount exceeding the amount of a claim presented by him for arrears of pay: *Held*, that he is indebted to the United States within the meaning of the act of March 3, 1875, (18 Stat., 481,) and that his claim should be disallowed.—*November* 13, 1880, Vol. 43, pp. 336–337. (U.)

INDEMNITY.

See Bonds, 98–99, 101, 106–107.

INDIANS—INDIAN AFFAIRS.

See, also, Appropriations, 41, 53–54; Attorneys, 85–87; Compensation, 298; Contracts, 328–329, 368; Department Practice, 394; Disbursing Officers, 428; Evidence, 476; Jurisdiction, 636, 651; Medical Attendance, 680, 682; Transportation, 1150, 1153, 1156; Travelling Expenses, 1178.

563. Stores assume the character of Indian supplies when purchased and received by an agent of the Government exclusively for issue to the Indians. Also, when an officer or agent of the Quartermaster's or

Commissary Department has on hand supplies purchased for military use, which he is ordered to turn over for the use of the Indians, such stores become Indian supplies when they are turned over to an officer of the Indian Bureau, or are shipped to him.—*February* 11, 1870, Vol. 33, pp. 8–10. (B.)

564. Arrears of pay and bounty due insane persons and minors in the Cherokee Nation may be paid to the guardians duly appointed by the judges of the district courts established under and by virtue of the constitution and laws of the Cherokee Nation. (See sec. 13, art. 1, chap. ix of the compiled laws of the Cherokee Nation, edition of 1881.)—*February* 18, 1870, Vol. 33, p. 18. (B.)

565. Article XXV of the treaty of July 19, 1866, with the Cherokee Indians, (14 Stat., 805,) applies only to the bounties and arrears due under laws then existing, and which might remain unclaimed for two years. Such bounties and arrears due Cherokee regiments must be paid as stipulated in the treaty; but bounty subsequently granted follows the descent prescribed by law, or lapses into the Treasury.—*October* 12, 1870, Vol. 33, pp. 293–294. (B.)

566. In the cases of persons employed in the service of the Indian Bureau, accounts for travelling expenses, unsupported by subvouchers, will be disallowed except where it is shown to the satisfaction of the accounting officers that it was impracticable to procure proper receipts.—*May* 21, 1873, Vol. 35, pp. 330–331. (B.)

567. Guardians and administrators who have been duly appointed by the district judges of the Creek Nation, and who have given bond and security for the faithful performance of their duty, may be recog-

nized in the same manner as are guardians and administrators appointed by the proper officers of the Cherokees.—*May* 22, 1873, Vol. 35, p 332. (B.)

568. Funds derived from the sale of captured Indian property must be covered into the Treasury without abatement.—*July* 14, 1875, Vol. 37, pp. 3–4. (B.)

569. But funds derived from the sale of ponies, voluntarily given up by certain Indians under an agreement or understanding with the military authorities that the proceeds of such sale should be applied to the purchase of sheep, &c., for said Indians, may be so applied. Such a case does not come within the restrictions of sections 1617–1618, Revised Statutes.—*August*, 13, 1875, Vol. 37, pp. 56–57. (B.)

570. In the payment of annuities, small shares due minors who have no parents or legal guardians may be paid to the person with whom such minors reside and by whom they are supported, if done by advice and consent of the principal men of the tribe. But letters of guardianship should be required in cases in which the amount is sufficiently large to justify the expense. Where the reputed parents of the child belong one to each of two bands of Indians, the rights of the child belong with the mother. Its name should be placed on the roll of the tribe to which she belongs.—*December* 9, 1876, Vol. 38, pp. 423–424. (C.)

571. Section 2139, Rev. Stat., does not exclude the purchase and introduction into the Indian country of ardent spirits for purely medicinal or mechanical purposes when sanctioned by the proper officers of the Interior Department having control of

Indian Affairs. The following rules were prescribed by this office, March 2, 1877:

1st. Every voucher in payment for ardent spirits shall bear the certificate of the purchasing or other responsible officer of the Indian Department, that the spirits are for strictly medicinal and mechanical purposes only.

2d. Every such voucher must bear or be accompanied by a certificate of the agency physician that the spirits were required by him, and are to be used for strictly medicinal and mechanical purposes only; provided, however, that in all purchases made or authorized directly by the Commissioner of Indian Affairs, the physician's certificate will not be required.

3d. That in cases where the large amount purchased or other attendant facts and circumstances appear to warrant the suspicion that the spirits are intended for other than medicinal and mechanical purposes, the accounting officers before allowing the account or voucher may require such evidence or explanation as shall satisfy them in the premises.

4th. Exceptional cases in which it would be impracticable to enforce the foregoing will be considered on their merits.—*March* 2, 1877, Vol. 38, pp. 606–608. (C.)

572. The provision of section 5 of the Indian appropriation act of March 3, 1875, (18 Stat., 449,) limiting the amount to be expended at any agency in any one year to ten thousand dollars, applies to the appropriation for the Osages in the act of March 3, 1877, (19 Stat., 281.)—*May* 11, 1877, Vol. 39, p. 67. (C.)

573. The term "employees" in section 5 of the Indian appropriation act of March 3, 1875, (18 Stat., 449,) is used in its broad and general signification, and all the employees at any given agency, of whatever character or class, and whether "regular" or "special," are embraced within the limitation of that section. But said limitation does not embrace the cases of Indians employed solely in obedience to section 3 of the act of June 22, 1874, (18 Stat., 176).*—*May* 14 and *June* 4, 1877, Vol. 39, pp. 71–72, 128. (C.)

574. The rules require that the name of each Indian entitled to share in the payment, shall appear on the annuity pay-rolls *whenever it is possible*, but receipts are required only from heads of families or other persons to whom the money is actually and properly paid. Witnesses to these receipts are required. Separate receipts for salaries, &c., need not be taken, provided the aggregate received by each person is somewhere properly receipted for.

This office requires only one roll for each payment; the number in excess of one is subject to regulations of the Indian Office.—*June* 4, 1877, Vol. 39, pp. 127–128. (C.)

575. The proviso found in section 1 of the Indian appropriation act of August 15, 1876, relating to the pay of employees (19 Stat., 198) repeals so much of section 3682, Rev. Stat., as to permit the payment of employees out of the incidental funds of 1876 and 1877; and a clerk is an employee within the meaning of said proviso.—*July* 18, 1877, Vol. 39, pp. 222–224 (C.); *March* 8, 1878, Vol. 40, p. 38. (U.)

* By the act of May 11, 1880, (21 Stat., 131,) it is provided "that teachers and Indians employed at agencies, in any capacity, shall not be construed as part of the agency employees named in sec. 5," aforesaid.

576. The practice of taking receipts of a few chiefs or Indians for considerable sums of money, in gross, thus avoiding responsibility for the proper disbursement thereof, and evading a detailed account of the same, is pernicious, contrary to the spirit of the laws relative to accountability, and not warranted by the treaties.—*August* 8, 1877, Vol. 39, pp. 283–284. (C.)

577. In all cases where supplies are purchased for the Indian service and are not deliverable at the agencies by the seller, but are to be transported to their destination by transportation contractors or by common carriers, the receipts of the contractor or common carrier to whom they are delivered, must be obtained, in accordance with office circular of November 3, 1876; and such receipts must accompany the accounts in which payment for such supplies is claimed. In these cases the Indian agents should not receipt for the supplies until they have been delivered to them by the transporters, and then only upon regular bills of lading. No payment for transportation will be made until the transporter has delivered the freight to some responsible person, *other than himself*, and filed a receipt for the same.—*July* 27, 1878, Vol. 40, p. 389. (U.)

578. Where an Indian, not the natural or responsible head of the family, signs the annuity-roll for money due to other Indians, the authority for such act must be shown; and in all cases where one person signs for another, the relationship existing between them, giving colorable authority for the act, must be satisfactorily proven.—*November* 25, 1879, Vol. 42, p. 131. (U.)

579. A report or decision of a Commissioner of Indian Affairs in favor of a claim is not an award, and it

will not take the place of vouchers and evidence when the claim is considered by the accounting officers.—*January* 29, 1878, Vol. 39, p. 612; *January* 5, 1880, Vol. 42, p. 242. (U.)

580. The Secretary of the Interior and the Commissioner of Indian Affairs determined, from a claimant's affidavit, that his contract had been "complied with," and, thereupon, an instalment, due under the contract, was paid. Another instalment being claimed, it was: *Held*, that section 2104, Rev. Stat., did not require that the successors of said officers should again determine that the contract had been complied with.—*October* 21, and *November* 1, 1881, Vol. 44, pp. 565, 601–603. (U.)

581. The fact of the consideration and rejection of an item by the Commissioner of Indian Affairs and by the Secretary of the Interior is not a ground upon which the accounting officers can lawfully refuse to examine such item. No order for a rehearing is made necessary because of such rejection. In determining whether an item now presented for audit was embraced in a former settlement, the material point is, whether such item was included in, and constituted a part of the account presented to and examined by the accounting officers in making the former settlement. If the item was rejected by the Interior Department and was not reported to the accounting officers, and for that reason alone was not known to, or considered by them, the former settlement should not bar the consideration of such item at a subsequent settlement.—*January* 5, 1880, Vol. 42, pp. 243–244. (U.)

582. The provision in regard to open-market purchases, made by section 4 of the act of February 17,

1879, (20 Stat., 315,) applicable only to the Interior Department, inferentially dispenses with advertisement where purchases, made at any one time on the order of the Secretary, do not exceed in the aggregate five hundred dollars. It also limits the amount of open-market purchases, even in case of emergency, to three thousand dollars. Under this law or under the general provision of section 3709, Rev. Stat., if it appear officially in the papers that evidence tending to show the existence of the exigency was presented to the Secretary of the Interior, and that he decided that a public exigency required immediate delivery or performance, his decision is conclusive of the matter.—*August* 16, 1879, Vol. 41, p. 649. (U.)

583. Where one officer of the Indian service relieves another on a certain day, and both are not entitled to the compensation fixed for the office on that day, the service of the outgoing officer is deemed to terminate at the close of the day preceding the transfer, and that of the incoming officer to commence on the morning of the day of transfer.—*June* 19, *July* 27, *August* 2, and *September* 3, 1880, Vol. 43, pp. 11, 105, 118, 195. (U.)

584. Disbursing officers of the Indian Department are not required to furnish sub-vouchers for items of expenditure (such as ferriage, tolls, street-car and omnibus fares, baggage fees, meals at railroad stations, &c.) incurred while travelling under orders, unless the amount paid be extraordinarily large. But an itemized account of such expenditures must invariably be furnished.—*September* 4, 1880, Vol. 43, p. 201. (U.)

585. The certificate of a clerk in charge at an Indian agency cannot be accepted by the accounting

officers as evidence of the delivery of goods, he not being a responsible bonded officer of the United States and his transactions neither relieving nor binding the Indian agent.—*September* 30, 1880, Vol. 43, p. 269. (U.)

586. The Commissioner of Indian Affairs has no authority to issue certified vouchers.—*November* 11, 1880, Vol. 43, p. 334. (U.)

587. Inasmuch as, by section 2045, Rev. Stat., Indian inspectors "have power to suspend any superintendent or agent or employé," it would be inconsistent for the same person to attempt to discharge, at one and the same time, the duties of inspector and disbursing agent.—*May* 14, 1881, Vol. 44, p. 107. (U.)

588. There is no provision of law imposing upon an Indian inspector the duties of a disbursing officer; hence a bond given by an inspector, conditioned that he "discharge the duties of said office according to law," would not bind his sureties for money advanced for disbursement.—*July* 6, 1881, Vol. 44, p. 259; *February* 4, 1884, Vol. 48, p. 363. (U.)

589. The Secretary of the Interior is the judge of the manner in which and the purposes for which the interest, or any part thereof, which may accrue from time to time under the act of August 15, 1876, providing for the sale of certain Indian reservations in Kansas and Nebraska, (19 Stat., 208,) shall be expended for the benefit of the Indians therein named; and any disbursement of said interest, duly authorized by him in pursuance of said act, is not revisable by any other officer.—*January* 13, 1882, Vol. 45, p. 108. (U.)

590. Copies of receipts for Indian supplies furnished are not sufficient to justify the payment of

money from the Treasury.—*February* 6, 1882, Vol. 45, p. 204. (U.)

591. Delivery of supplies at an Indian agency must be certified to by a responsible bonded officer of the Indian service, or by the sworn statement of some person cognizant of the facts in the case, before the seller's claim for the price of the supplies can be allowed.—*February* 16, 1882, Vol. 45, p. 236; *June* 23, 1882, Vol. 45, p. 669. (U.)

592. Persons, (not officers) when travelling on business of the Interior Department, must furnish an affidavit in support of the items and charges incurred while in the performance of duty ordered or service rendered.—*March* 31, 1882, Vol. 45, p. 398. (U.)

593. Accounts for travelling expenses in the Indian service, presented to the accounting officers for settlement, should be accompanied by evidence of the right of the individual transported to transportation. If he is an officer, agent, or employee of the Government, it must appear, either from the nature of his office, appointment, or employment, or by some other competent evidence, that his duties were such that he might lawfully be required to perform the travel; it should be shown (by his certificate, if he is an officer, or by affidavit, in case he be a civilian) that the expense was incurred in the performance of the duty ordered; and there should be annexed to the voucher or other papers a copy of the order directing the travel, or, where the travel is performed without special order, within the limits of the reservation of which an agent is in charge, the object of the journey should be fully stated. Unless the nature of the duty in the discharge of which the travel is performed is in some adequate manner disclosed, it may frequently be im-

possible to determine from what appropriation the expense of the travel may properly be paid. The transportation requisition or request must not be confounded with the order requiring or directing the travel; the former cannot be made a substitute for the latter.—*June* 15, 1882, Vol. 45, pp. 632–641. (U.)

594. The act of August 7, 1882, (22 Stat., 345–346,) which authorizes the auditing of unpaid claims heretofore filed "for services rendered and supplies furnished under direction of the Indian Bureau or any of its agents in cases where said services and supplies are found to have actually been applied to the benefit of the Indians," cannot be held to cover the case of a claimant who furnished supplies, not to the United States or to the Osage Nation, but to particular families of the Osage Indians, without the direction or order of the Indian Bureau or any agent, but simply at the suggestion of an agent and upon his promise to do all in his power to have the Government pay for them.—*November* 8 and *December* 14, 1883, Vol. 48, pp. 103, 202–204. (U.)

595. It is not the province of the accounting officers to recommend to Congress to make appropriation for the payment of claims, except by certifying such balances as they shall find to be actually and legally due.—*December* 14, 1883, Vol. 148, p. 204. (U.)

596. As a prerequisite to payment for the delivery of Indian supplies by a contractor, the receipt of the proper Indian agent has always been required.—*April* 7, 1884, Vol. 48, p. 570. (U.)

INDIAN AGENTS.

See, also, Bonds, 104, 112–113; Claims, 282; Compromise, 299; Interest, 629; Jurisdiction, 648–649; Railroads, 1069; Set-off, 1106; Sureties, 1125–1126; Travelling Expenses, 1180.

597. An Indian agent, either in or out of service, cannot properly hold unpaid certified vouchers, whether styled "reserve" or something else; nor can he issue supplementary ones at will. Such vouchers are not necessary for his protection, and may be productive of evil by falling into improper hands.—*May* 11, 1875, Vol. 36, pp. 594–595. (B.)

598. Where an agent for the Choctaws performed, by direction of the Secretary of the Interior, the duties of the Chickasaw agency: *Held*, that he was not entitled to extra compensation therefor.—*November* 3, 1875, Vol. 37, pp. 211–213. (B.)

599. An Indian agent's service and accounts, under an appointment, are to be considered as an entirety, and the incidental circumstance of giving two bonds does not change that condition. The separation of accounts under bonds is not made for his benefit, but for the benefit of his sureties.—*May* 16, 1877, Vol 39, pp. 74–77. (C.)

600. Items in an Indian agent's account "for board" *at his own home* do not come properly under the head of "necessary travelling and incidental expenses," and cannot be allowed.—*January* 14, 1879, Vol. 41, p. 54; *February* 20, 1880, Vol. 42, p. 389. (U.)

601. Payment to a commissary sergeant, by an Indian agent, of compensation for clerical work performed by the soldier in making up the agent's accounts, is in violation of section 1765, Rev. Stat., and to allow credit to the agent for the amount paid would

be unlawful.—*March* 25, 1880, Vol. 42, pp 485–486. (U.) Payment to an interpreter for cutting wood at an agency comes under the same rule.—*August* 3, 1883, Vol. 47, pp. 515–516. (U.)

602. Proceeds of sale of corn, the property of Indians, are not properly chargeable to an Indian agent, under the head of "Miscellaneous receipts," within the meaning of section 3618, Rev. Stat.—*June* 28, 1880, Vol. 43, p. 29. (U.)

603. The discontinuance of an agency and the relief of the agent from duty thereat works an actual dismissal of the agent from the Indian service. *A new appointment* is required to reinstate him and to entitle him to compensation.—*July* 27, 1880, Vol. 43, p. 105. (U.)

604. In allowing credit to an Indian agent for his own salary, the bond covering the time when payment was made is the proper bond entitled to credit.—*September* 8, 1880, Vol. 43, p. 212. (U.)

605. Settlement of an agent's accounts or collection of balances found to be due from him is not to be delayed by reason of anticipated favorable Congressional action in his behalf.—*September* 14, 1880, Vol. 43, p. 231. (U.)

606. Where salary has been allowed to an agent, to which it afterwards appears he was not entitled, it may be charged back to him.—*September* 16, 1880, Vol. 43, p. 235. (U.)

607. An agent's accounts for two or more quarters may be included in one settlement, provided such a course does not interfere in determining the precise liability of sureties on different bonds.—*November* 30, 1880, Vol. 43, pp. 373–374. (U.)

608. One who receipts an invoice as agent must disclose the name of his principal.—*December* 3, 1880, Vol. 43, p. 384. (U.)

609. Where *cumulative* bonds are given by an Indian agent, under one appointment, his account from the commencement of his service to the date of the second bond should be stated under the first bond only; from the date of the second to the date of the third bond, it should be stated under the first and second bonds; from the date of the third to the date of the fourth (or to the end of his service, as the case may be,) it should be stated under the first, second, and third bonds, and so on.—*December* 21, 1880, Vol. 43, pp. 434–436; *November* 8, 1882, Vol. 46, pp. 405–407. (U.)

610. One authorized to receipt for an agent must sign in the name of his principal, and his authority must be shown or be on file.—*January* 15, 1881, Vol. 43, p. 508. (U.)

611. The Secretary of the Interior is authorized to appoint special agents.—*January* 19, 1881, Vol. 43, p. 515 (U.); sections 2067, 3614, Rev. Stat.

612. Accounts of Indian agents are within the rule of section 250, Rev. Stat., which requires all "accounts of the expenditure of public money to be settled within each fiscal year"; and to bring any portion of an agent's accounts within the *exception* there made, it would seem to be necessary that some other period for their settlement should first be fixed by the "Secretary of the Treasury, with the assent of the President."—*February* 1, 1881, Vol. 43, pp. 540–541. (U.)

613. Where agents purchase supplies at remote points and deliver them to freighters for transporta-

tion to the agencies at Government expense, the agent on receipting the bill of lading must state affirmatively where the freighters received the property.—*February* 12, 1881, Vol. 43, p. 570. (U.)

614. Payments to a land-grant railroad, by an Indian agent, of his own personal fare, or that of his civil employees, is not prohibited by the act of March 3, 1875, (18 Stat., 453.)—*February* 26, 1881, Vol. 43, pp. 606–607. (U.)

615. Where an Indian agent disregards his instructions and disburses money to attorneys instead of paying it directly to the annuitants, credit will not be given him for the payments thus made in violation of law and regulations, until it is shown that the money passed into the hands of the persons entitled to the same.—*July* 11, 1882, Vol. 46, p. 37. (U.)

616. In all cases where purchases of Indian supplies are made in open market, the purchasing agent should state affirmatively at what point the supplies are to be turned over to the transportation contractor.—*December* 14, 1881, Vol. 45, pp. 17–18. (U.)

617. An Indian agent, travelling under orders, is not entitled to subsistence or to payment on account of his board except while travelling. (See section 2077, Rev. Stat., 18 Stat., 72, 452.) General Orders No. 69 of 1874 declares, as a rule for settling the accounts of Army officers, that "when delays at hotels are incident to, and necessary for, the performance of the duties for which the travel is ordered, charges for hotel expenses will be allowed, not extending beyond seven days at any one place." Allowances are authorized in the Indian service for so much of such delays as can be deemed incident to travel. A certified voucher in an Indian agent's claim for travelling

expenses operates only as evidence of facts on which the claim is based, and in no way alters the rights of the claimant.—*March* 14, 1882, Vol. 45, pp. 329–330; *November* 16, 1883, Vol. 48, pp. 122–123. (U.)

618. The act of March 3, 1847, (9 Stat., 203,) which provided that the Government should furnish Indian agents with dwelling houses, was repealed by the act of June 22, 1874; and the annual appropriation for "Buildings at agencies, and repairs of the same" does not necessarily include the authority to erect or rent buildings for the agent's private use. Some of the treaties with Indian tribes, however, contain agreements binding the United States to provide dwellings for its agents. But no authority exists for the erection or the renting of a dwelling house for the use of the agent at the Mescalero Agency.—*April* 10, 1882, Vol. 45, pp. 429–431. (U.)

619. An Indian agent is not entitled to his salary during an absence from his agency without leave.—*March* 24, 1882, Vol. 45, p. 360. (U.)

620. Where the amount of a salary of an Indian agent is clearly defined by law for an indefinite period, the mere failure to make a sufficient appropriation for its payment will not of itself so change the law as to cut off the right of the incumbent; and, if the salary is so defined for a definite limited period, the rule is the same during that period.—*August* 3, 1882, Vol. 46, p. 130. (U.)

621. It is the duty of an Indian agent to satisfy himself of the correctness of a voucher before payment, and his failure to do so makes him responsible for any overpayment he may make.—*August* 21, 1882, Vol. 46, p. 202. (U.)

622. Where, for services rendered by a contractor, an Indian agent paid him in lumber, the property of the United States, with which the agent was never charged: *Held*, that the agent was not entitled to a credit for the value of the lumber, even though it served to liquidate an obligation of the Government.—*November* 8, 1882, Vol. 46, p. 403. (U.)

623. If an Indian agent is not chargeable for cash or property unaccounted for under bonds not now current, the fact that he has the rightful custody of either cash or property should not debar him from receiving money admitted to be his due.—*February* 26, 1883, Vol. 47, p. 76. (U.)

624. An Indian agent is not entitled to credit for payment of charges on extra baggage—his private effects—over and above the customary amount essential to the ordinary comfort of travellers.—*August* 3, 1883, Vol. 47, pp. 515–516. (U.)

625 An Indian agent is not authorized to pay claims, but only such indebtedness as has accrued in connection with his agency while in his charge; and even such indebtedness should be paid during the quarter in which the same accrued. Under the law, accounts of disbursing officers must be rendered quarterly and are presumed to contain all the transactions of the quarter to which they pertain. Any obligation remaining unsatisfied after the accounts of the quarter are closed takes on the nature of a claim and should be settled and adjusted in the Treasury Department under section 236, Rev. Stat.—*November* 8, 1882, Vol. 46, p. 404. (U.)

626. The regulations relative to the depositing by Indian agents of unexpended balances of funds remaining in their hands on filing a new bond, make no

exception on account of the character of the fund, for the reason that the object of the deposit, which is to fix the liability of the sureties on the respective bonds, would be entirely defeated if any portion of the money was allowed to remain in the agent's hands and to be transferred to his next bond. No loss can accrue to an agent in making the deposit, as the same funds can be again advanced to him and the expenditure can be made and allowed under the new bond.—*April* 17, 1884, Vol. 48, pp. 615–616; *Ibid*, pp. 649–650. (U.)

INSANITY.

See Claims, 276; Indian Affairs, 564; Pensions, 977–978.

INSTRUMENTS.

See Appropriations, 24.

INSURANCE.

See Vessels, lost or Destroyed, 1191.

INTEREST.

See, also, Indian Affairs, 589; Jurisdiction, 640, 643.

627. A Treasury certificate, issued in favor of a claimant, was sent to the claimant's attorney, who

converted the same to his own use. The Government, after considerable trouble and expense, secured a return of the money, with interest and costs: *Held*, that when the Government is at the expense and trouble of carrying on a suit against an agent of the claimant's own selection, it is not usual to pay over on recovery anything more than the principal sum, as the expenses not covered by the costs are generally much greater than the amount of the interest.—*July* 17, 1871, Vol. 34, pp. 89–90. (B.)

628. Under the provisions of the act of May 15, 1872, (17 Stat., 117,) interest may be paid upon the deposits of marines.—*March* 29, 1873, Vol. 35, pp. 226–227. (B.)

629. When the accounts of an Indian agent have been settled by the accounting officers, and a transcript of the certified balance has been forwarded to the Solicitor of the Treasury for suit, the question whether interest is properly chargeable is a matter for the consideration of the Solicitor and the courts. It is not within the jurisdiction of the accounting officers.—*June* 14, 1880, Vol. 43, p. 4. (U.)

INTERLINEATIONS.

See Erasures.

INTERPRETATION.

See Construction of Statutes.

JURISDICTION.

See, also, Accounting Officers, 10, 11; Bounty, 145, 147; Claims, 253, 266, 283; Comptroller, 307; Contracts, 365, 368–369, 371; Damages, 381–382; Forgery, 500; Indian Affairs, 595; Interest, 629; Medical Attendance, 684; National Home for Disabled Volunteer Soldiers, 721; Pay and Allowances, 761, 778; Pensions, 1010; Prisoners of War, 1035; Railroads, 1052, 1065, 1067; Rent, 1083–1084, 1086; Transportation, 1149.

630. The Second Comptroller can have no jurisdiction to render any decision upon any claim or account if it do not appear from the papers pertaining thereto that the same has been presented to, and finally acted upon by the proper Auditor. (See 15 Opin., 139–146.) The Auditor's action should be certified in every case, and the certificate transmitted to the Comptroller with the claim or account, as required by section 277, Rev. Stat.—See claim papers in the case of F. H. Anderson, ordnance employee, settlement 1783, Army Pay Division, miscellaneous, April 10, 1882; also, in the case of Marvin Moore, machinist at Springfield Armory, settlement 1392, (A. P. D, misc.,) January 18, 1882; and in the case of Frederick Francis, private Company B, Twenty-ninth United States Colored Troops, settlement 537442. See, also, Vol. 45, pp. 329, 621, *March* 13 and *June* 13, 1882. (U)

631. A decision made by an officer at a time when he has no jurisdiction is void. Hence, a settlement of an account by the accounting officers in favor of a land-grant railroad company, at a time when such settlement was prohibited by the act of March 3, 1875, is not a bar to a settlement of the account and an allowance of fifty per cent. thereon, under the appropriation act of March 3, 1879.—*April* 25, 1879, Vol. 41, pp. 353–355. (U.)

632. When the power to decide is given by statute it must appear affirmatively on the papers that the exercise of the power was in a case within the jurisdiction so given.—*August* 16, 1879, Vol. 41, p. 649. (U.)

633. It is the province of the Navy Department to rate its own vessels; and the accounting officers are bound to allow pay according to such rating.—*January* 11, 1871, Vol. 33, p. 432. (B.)

634. Where the Senate Committee on Claims reported adversely on a claim and their report was considered and adopted by the Senate, but subsequently the matter was recommitted to said committee for further consideration, and it was afterwards by the Senate "Ordered that the claimant have leave to withdraw the papers:" *Held*, that this last action of the Senate set aside its earlier action and removed the obstacle to the further consideration of the claim by the accounting officers.*—*January* 6, 1877, Vol. 38, pp. 473–474. (C.)

635. The accounting officers of the Treasury have no judicial functions conferred upon them to settle differences between citizens. Disputes of this character should be settled in the proper courts.—*August* 23, 1877, Vol. 39, p. 321. (C.)

636. Reports or recommendations, showing the result of administrative examination made by the Commissioner of Indian Affairs pursuant to section 464, Rev. Stat., are not awards, nor, in any sense, a final determination; nor do they authorize the accounting

* According to the present practice, when a claim has been before Congress but has not been there decided, and by reason of the expiration of the Congress, or for any other reason, is no longer pending there, the fact of its having been before Congress does not affect the jurisdiction of the accounting officers.

officers to certify a balance without examining anew the vouchers and other evidence.—*January* 29, 1878, Vol. 39, pp. 612–613; *January* 5, 1880, Vol. 42, pp. 242–244. (U.)

637. The War Department is wholly without power to negotiate loans or to contract for the repayment of money loaned or advanced. Claims, the nature of which appeal to the honor and justice of the nation, but the legality of which as a debt or pecuniary obligation has never been recognized by the law, are claims of which Congress alone has jurisdiction. Hence, where the city of Baltimore, relying on the supposed authority of General Schenck, (the officer in command,) and on his promise that the money should be repaid by the Government, borrowed funds and paid for the requisite labor to construct certain fortifications, General Schenck having impressed laborers and the city having paid them a specified rate per day: *Held*, that a claim made by the city for reimbursement, based upon the promise of the commanding general, was not one of which the accounting officer had jurisdiction.—*February* 14, 1879, Vol. 41, pp. 134–141 (U.); Reeside *v* U. S., 2 Court of Claims, 1.

638. Under the acts of June 16, 1874, June 22, 1874, and March 3, 1875, (18 Stat., 74, 138, 453,) the accounting officers had no jurisdiction of an account of the Northern Pacific Railroad Company for transportation which was in part over a land-grant road. But the act of March 3, 1879, (20 Stat., 390,) which authorized payment of fifty per cent., restored jurisdiction to the Third Auditor and the Second Comptroller, and by the special provision contained in that act it has become the duty of these officers to

adjust such accounts, even though the same may be in litigation in the courts.—*April* 25, 1879, Vol. 41, pp. 353–355. (U.)

639. The accounting officers have no jurisdiction of claims for quartermaster's stores, under the act of July 4, 1864, except upon the favorable recommendation of the Quartermaster-General.*—*May* 2, 1879, Vol. 41, pp. 369–370; *February* 21, 1883, Vol. 47, p. 56. (U.)

640. By virtue of a special power conferred upon him by the act of March 3, 1877, (19 Stat., 402,) the Secretary of War reopened a certain settlement made by the United States with the Western and Atlantic Railroad of the State of Georgia and readjusted the same, awarding to the claimant an additional balance. It being afterwards discovered that in computing interest the Secretary had not followed the mode specified in the said act, the State of Georgia objected to the settlement as made, and claimed large additional amounts. The Secretary reconsidered the matter and made a supplemental award: *Held*, that in making his first award under the said act, the Secretary of War was acting within the special jurisdiction conferred upon him, and that any mistake made by him in computing interest, whether it arose from inadvertency or from a misconstruction of the law or a misapprehension of the facts, was mere error, such as did not vitiate or impair the first readjustment, and that his special power was exhausted when that readjustment was consummated: *Held, further*, that the claimant, after accepting the money in pursuance of the first readjustment, could not complain of an error in law

*Timber used in the construction of fortifications is not regarded as quartermaster's stores.—*May* 31, 1883, Vol. 47, p. 399.

occurring therein.—*July* 5, 1879, Vol. 41, pp. 542–547. (U.)

641. The accounting officers of the Treasury having no jurisdiction of claims for unliquidated damages not based on contract, have no power to consider an item for repairs to real property made necessary by the occupation thereof by Federal troops.—*July* 7, 1879, Vol. 41, pp. 549–550. (U.)

642. A claim for royalty upon knapsacks purchased and used at the instance of the Quartermaster's Department, in a case where no contract has been made with the claimant, is not a claim within the jurisdiction of the accounting officers.—*November* 25, 1879, Vol. 42, pp. 130–131. (U.)

643. In what cases interest should be claimed upon the balances of accounts that have been certified by the accounting officers and transmitted to the Solicitor of the Treasury for collection, is a matter for the consideration of the Solicitor and not a matter to be decided by the accounting officers.—*June* 14, 1880, Vol. 43, p. 4. (U.)

644. Payment of a claim for reimbursement of specific sums of money disbursed by an Army officer for his own quarters, without orders from the Quartermaster's Department, is prohibited by the act of July 15, 1870, (16 Stat., 320,) and the accounting officers have no jurisdiction to allow such claim, either as commutation or as reimbursement.—*February* 28, 1880, Vol. 42, p. 414; *June* 24, 1880, Vol. 43, p. 24. (U.)

645. When the accounting officers have notified the War Department that an officer of the Army is in arrears to the United States, and of the amount thereof, their duty is discharged; it is not their province to

direct that Department to make or refrain from making a stoppage.—*June* 23 and *July* 14 and 24, 1880, Vol. 43, pp. 18, 69–70, 98; *July* 13, 1881, Vol. 44, pp. 279, 422; *January* 28 and *February* 7, 1882, Vol. 45, pp. 168, 206; *July* 24, 1883, Vol. 47, pp. 474–476; *April* 29, 1884, Vol. 48, pp. 654–655. (U.)

646. But when the officer submits evidence tending to show himself entitled to a credit or credits not yet given, and the matter is open for reconsideration by the accounting officers, it is, in most cases, proper to defer enforcement of any stoppage until such evidence can be examined by the accounting officers; and such is the practice of the War Department.—*July* 13 and *October* 8, 1881, Vol. 44, pp. 279–280, 530; *January* 28, 1882, Vol. 45, p. 168. (U.)

647. After drafts have been properly issued in payment of claims settled before the accounting officers, this office has no further jurisdiction or control over them.*—*July* 21, 1880, Vol. 43, p. 90. (U.)

648. When the Indian Office has forwarded the quarterly accounts of its agents to the Treasury Department, with its administrative action thereon, its jurisdiction over the subject-matter is terminated and that of the accounting officers attaches.—*May* 6, 1879, Vol. 41, p. 390; *November* 30, 1880, Vol. 43, p. 375. (U.)

649. Where the accounts of an Indian agent have been carefully considered and a settlement made on the facts and on the merits of the case, and the matter has been sent to the court for adjudication, the jurisdiction of the accounting officers has been exhausted. *January* 4, 1881, Vol. 43, p. 463. (U.)

* Where an attorney is charged with unprofessional conduct in wrongfully withholding such draft from his client, and he fails satisfactorily to explain or refute the charge, the practice is to lay the charge of unprofessional conduct before the Secretary of the Treasury for his action.

650. Where a claim arising under a contract has been examined, and the balance due thereon settled by the accounting officers, the case is not deemed open for further consideration. Where claims arising under contract were not duly considered in making the former settlement, application should be made for a rehearing. But a claim arising from the wrongful acts or the negligence of the Government or its agents is not within the jurisdiction of the accounting officers.—*June* 21, 1881, Vol. 44, p. 222; *March* 29, 1882, Vol. 45, p. 387. (U.)

651. The First Comptroller has no jurisdiction to receive, examine, or settle an account or claim for services, which is payable out of Osage trust funds. See sections 269, 273, and 277, Rev. Stat.—*November* 1, 1881, Vol. 44, p. 601. (U.)

652. An officer was mustered out of service as a captain of the First Artillery, under the provisions of section 11 of the act of July 15, 1870, (16 Stat., 318,) and drew the one year's pay thereby allowed. He re-entered the service in 1875 as a paymaster. Under a mistaken belief that his case came within the requirements of the act of March 3, 1875, (18 Stat., 497,) which provides that officers mustered out as supernumeraries, under said act of July 15, 1870, and subsequently reappointed, shall refund the one year's pay received by them at muster-out, the officer after his re-entry into the service paid himself, monthly, only fifty per cent. of his salary as paymaster, until the aggregate of the unpaid moieties equalled the year's pay so drawn by him. It appears that he was accustomed to give a receipt in full for the pay of his rank, and to make his formal returns as if he had paid himself in full, and then to return

to himself, as disbursing officer, fifty per cent. of the amount. In January, 1880, he filed a claim for half of his salary thus returned: *Held*, that the transaction did not amount to a voluntary payment of money to the United States, such as would estop him from recovering it; that his claim was not a claim for money erroneously paid into the Treasury by him, but a claim for undrawn salary, of which the accounting officers had jurisdiction, and that it should be allowed. (Maynadier's case.)—*June* 10, 1880, Vol. 42, pp. 687–696. (U.)

653. Where, however, an officer who had been mustered out and had drawn one year's pay and allowances, under section 12 of said act, (see 645, *ante*,) was afterwards nominated to and confirmed by the Senate for reappointment to office in the Army, but was notified that his commission would not be signed or issued until he should have refunded the year's pay and allowances so drawn by him: *Held*, (his commission not having been signed nor issued until after he had refunded the amount, as required,) that a claim for the amount thus refunded was not a claim for salary undrawn; that the accounting officers had no jurisdiction of such a claim, and that Congress alone could afford relief. (Sinclair's case.)—*August* 31, 1881, Vol. 44, pp. 431–432. (U.)

654. Prior to the act of July 15, 1870, it was within the discretion of the Secretary of the Navy to determine the time and manner of an officer's re-examination for promotion, and where the Secretary, by order, directed that an officer who had failed on his first examination be re-examined on August 1, 1868, the order determined the time at which the officer became entitled to the re-examination. A de-

cision made in the regular course of proceeding, by an official charged with the duty of deciding, is not to be disregarded because of any supposed or actual error of judgment, mistake of law, or injustice to the person affected by the decision.—*October* 31, 1882, Vol. 46, p. 429. (U.)

655. Claimant, in August, 1873, entered into a written contract with the Army officer in command at Camp Grant, Arizona, to furnish eleven yoke of oxen, with men and rations, for one year, to haul logs to said camp, and to accept, in consideration therefor, thirty thousand feet of sawn lumber, in monthly instalments, as the same could most conveniently be furnished. No value was affixed to the lumber, and the contract provided that no money compensation should be made or claimed. Claimant performed his part of the contract, but received only eighteen thousand nine hundred feet of said lumber. In June, 1878, the saw-mill at Camp Grant was removed to another post, and there were no means afterwards of furnishing the remainder of the lumber. He presented a claim for the cash value of the undelivered portion of the lumber: *Held*, that the officer who undertook to contract for the use of teams and for personal services, to be paid in lumber, exceeded his authority, and that the contract was for that reason void.—*December* 17, 1881, Vol. 45, pp. 24–30. (U.)

656. Where claims were presented for rent of lands occupied by the United States, during the Indian wars of 1855–'56, without lease or express contract: *Held*, that the accounting officers had no jurisdiction thereof.—*April* 18, 1882, Vol. 45, p 451. (U.)

657. Where suit was brought by an Army officer in the Court of Claims for pay and allowances, and a judgment rendered against him (see 3 Court of Claims, 198), and subsequently his widow preferred a claim for the same before the accounting officers: *Held*, that the judgment of a court of record having jurisdiction of a cause and of the parties is binding and conclusive upon parties and privies until it is regularly reversed by some court having appellate jurisdiction.—*May* 1, 1882, Vol. 45, pp. 492–493. (U.)

658. An officer whose commission specified his rank as dating from October 15, 1865, claimed to be entitled to have his appointment as second assistant engineer treated as dating back to February 15, 1865, he having then completed his sixteen months' sea service: *Held*, that it was for the appointing power to decide to what time his appointment or promotion should date back; and that the decision thus made was not subject to review by the accounting officers.—*December* 6, 1882, Vol. 46, pp. 488–489. (U.)

659. The expiration of the five years mentioned in section 4 of the act of June 14, 1878, (20 Stat., 130,) has not affected in any manner the power and duty of the accounting officers to "continue to receive, examine, and consider the justice and validity of all claims under appropriations the balances of which have been exhausted or carried to the surplus fund under the provisions of that section," to wit, section 5 of the act of June 20, 1874, (18 Stat., 110.) In regard to all claims of the kind referred to which were not filed within the said five years, the pre-existing laws are in force, and the duties of the accounting officers are the same that were prescribed before the passage of the act of June 14, 1878.—*July* 31, 1883,

Vol. 47, pp. 503–506; *November* 23, 1883, Vol. 48, pp. 135–140. (U.)

660. The Second Comptroller has no authority to release a paymaster's surety from any liability he may have incurred under his bond.—*July* 6, 1883, Vol. 47, pp. 434–435. (U.)

661. The executive department cannot legally refer a claim which is not properly before it, *i. e.*, over which it has no jurisdiction, to the Court of Claims.—*February* 27, 1884, Vol. 48, pp. 439–442. (U.)

662. The accounting officers have no jurisdiction of claims for damages sounding in tort.—*December* 17, 1881, Vol. 45, pp. 26–27; *June* 10, 1882, *Ibid.*, p. 616; 4 Opin., 327; 6 Opin., 516; Opinion of Attorney-General Taney, in the case of John S. Stiles, Cong. Ed., 881; *February* 26, 1883, Vol. 47, p. 21. (U.)

663. The authority given to the accounting officers by sections 273 and 277, Rev. Stat., to settle "all accounts" of the classes therein mentioned has been held not to include claims for damages sounding in tort or claims for the forcible taking or occupancy of private property, real or personal. The act of July 4, 1864, (sections 300 A and 300 B, Rev. Stat.,) confers special powers over certain claims for personal property.—*December* 7, 1883, Vol. 48, p. 176. (U.)

664. The jurisdiction of the accounting officers being conferred by statute, their functions are limited to the powers given by statute.—*December* 6, 1883, Vol. 48, pp. 170, 176. (U.)

665. When an account or claim has been duly certified to the Comptroller, jurisdiction remains with him until a final decision is made.—Claim of John H. Caldwell, *December* 14, 1875 (B.) and *November* 12, 1884, Vol. 49, pp. 655–667. (U.)

LAND-GRANT ROADS.

See Railroads.

LAPSE OF TIME.

See Time.

LAUNDRYMEN.

666. Payment of a soldier's bill to a laundryman by a paymaster, or the entry of the charges of a laundryman against a soldier on the muster and pay rolls is not allowable.—*January* 27, 1882, Vol. 45, pp. 161–163. (U.) But see section 3 of the act of June 30, 1882, (22 Stat., 122–123.)

LEASES.

See, also, Assessments, 60; Contracts, 362; Disbursing Officers, 427; Tenancy, 1133.

667. Where a contract of leasing was made with a party as the trustee of an express trust: *Held*, that such trustee is treated in law as the principal, and his receipt is a sufficient voucher for rents growing due upon contracts duly made by him as such trustee.—*December* 9, 1882, Vol. 46, p. 502. (U.)

LEAVE OF ABSENCE.

See, also, Medical Attendance, 681; Mileage, 690, 702, 705–707, 714; Pay and Allowances, 741, 815–818; Travelling Expenses, 1170.

668. Section 31 of the act of March 3, 1863, (12 Stat., 736,) which prescribes that officers absent from duty with leave, except for sickness or wounds, shall receive only half-pay, as amended by section 11 of the act of June 20, 1864, (13 Stat., 145,) presupposes that an officer is, during such absence, in a legal condition to perform duty and to draw the pay and allowances of his grade. Hence, where an officer who had been sentenced by a general court-martial to "suspension from rank for the period of 18 months, and from pay for the same period, excepting $50 per month," was granted a leave of absence for more than thirty days, covering the unexpired portion of his term of suspension: *Held*, that it was not a leave within the meaning of the law, and that he should, therefore, be paid the whole of the fifty dollars per month, even after the expiration of thirty days.—*February* 20, 1872, Vol. 34, p. 350. (B.)

669. Officers of the Army are allowed the privilege of aggregating the leaves of absence allowable to them each "leave year," from June 20 to the following June 19, inclusive, taking the thirty days at the end of one year and the thirty days at the beginning of the next year, thus making a leave of sixty consecutive days, without reduction of pay for the time in excess of thirty days.—*March* 6, 1872, Vol. 34, p. 373. (B.)

670. The expiration of an officer's leave should find him at his proper station; and it is his duty, if his station is changed during his absence, to report, when his leave ends, at the new station, and not at the sta-

tion he left. Absence in excess of his allowed leave, due to a neglect of this rule, is chargeable against him.—*March* 6, 1882, Vol. 45, pp. 303–304. (U.)

671. Under the act of June 20, 1864, (13 Stat., 145,) an officer cannot receive, for other cause than sickness or wounds, more than thirty days' leave of absence in any one year without deduction from his pay or allowances; nor can an assistant surgeon, by furnishing a substitute, obtain leave except on this principle.—*May* 10, 1883, Vol. 47, pp. 284–285. (U.)

LETTERS OF ADMINISTRATION.

See Executors—Administrators.

LETTERS OF ATTORNEY.

See Powers of Attorney.

LIABILITY.

See Accountability.

LIMITATION OF TIME.

See Time.

LOST CHECKS.

SEE CHECKS, 245, 251.

LOST GOODS.

SEE APPROPRIATIONS, 30.

LOST HORSES.

SEE DEPARTMENT PRACTICE, 385; EVIDENCE, 465; HORSES, 555.

LOST PROPERTY.

SEE, ALSO, CLAIMS, 269; DEPARTMENT PRACTICE, 385.

672. Claims for property lost while in the naval service cannot be allowed and paid under the provisions of the act of March 3, 1849, (9 Stat., 414, section 3483, Rev. Stat.) The act of 1849 relates in all its provisions only to the Army. (See section 977 of Digest of 1869.)—*April* 5, 1876, Vol. 37, pp. 597–599. (U.)

LOST VESSELS.

SEE VESSELS, LOST OR DESTROYED.

LOYALTY—DISLOYALTY.

SEE, ALSO, CLAIMS, 258; PAY AND ALLOWANCES, 780; SET-OFF, 1106.

673. Payment of a debt due the estate of a loyal claimant, under the act of July 4, 1864, (Rev. Stat., sections 300 A and 300 B,) may be made to his administrator, irrespective of the status of his heirs as to loyalty.—*July* 24, 1872, Vol. 34, p. 614. (B.)

674. It is not the duty of the accounting officers of the Treasury to require proof of loyalty of claimants under the act of March 3, 1849, (sections 3482–3483 Rev. Stat.)—*October* 3, 1877, Vol. 39, pp. 401–402; *May* 8, 1878, Vol. 40, p. 182 (U.); 16 Opin., 652.

675. Arrears of pay and bounty cannot be paid to disloyal heirs, but such heirs may be passed over and payment of the entire arrears and bounty made to the next loyal person in the order of inheritance prescribed by the act of July 11, 1862, (12 Stat., 535.) —*March* 9, 1880, Vol. 42, pp. 434–438. (U.)

676. N., a disloyal citizen, died, leaving a widow and eleven children, and while his estate was in charge of an administrator, and while five of the children were minors, certain property of the estate was seized, as quartermaster's stores, for the use of the Army. No proof was offered as to the loyalty of any one concerned, except the presumption arising from the minority of the five who claimed payment: *Held*, that the want of proof of the loyalty of the administrator was not a ground for denying the claim of the five children who were minors during the war, and that the allowance of their claim was not inconsistent with the ruling of the Supreme Court in Carroll *v.* United States, (13 Wall., 151.)—

September 19, 1884, Vol. 49, p. 487; see, also, Vol. 46, pp. 651–652, *January* 19, 1881, Vol. 47, p. 655, *September* 5, 1883. (U.)

677. Those who are the real beneficiaries under the act of July 4, 1864, (sections 300 A and 300 B of the Rev. Stat.,) are the ones whose loyalty is to be inquired into, except where their rights accrue from one in whom the legal title to the property was vested at the time of its seizure, in which case the loyalty of the latter must be established —*September* 19, 1884, Vol. 49, pp. 482–490. (U.)

MARINES—MARINE CORPS.

See Appropriations, 48; Bounty, 117–118; Deserters, 416; Fuel and Quarters, 507, 513, 531, 543; Interest, 628; Mileage, 687, 711; Pay and Allowances, 885–898, 952; Rations, 1075; Servants, 1100.

MARRIAGE.

See Colored Soldiers, 294; Pensions, 979, 981; Widows, 1204.

MEDICAL ATTENDANCE.

678. Where there was imperative need of haste in summoning a physician to attend upon an Army officer, and the nearest Army surgeon was stationed

two miles away, and the officer, during his sickness, was delirious, and incapable for the greater part of the time of giving any directions looking to the employment of a physician, and the citizen physician who was called in had attended him on two previous occasions, and the vouchers for said services had been approved by the Surgeon-General, audited by the accounting officers and paid: *Held*, that the officer might properly be reimbursed for the actual expenses incurred by him for medical attendance.—*June* 8, 1877, Vol. 39, pp. 139–144. (C.)

679. Since the approval of the act of May 18, 1872, (17 Stat., 135,) superintendents of national cemeteries have not been considered entitled to medical attendance and medicines, as provided previous to that date. At no time have their wives and families been so entitled.—*August* 17, 1874, Vol. 36, pp. 198–199. (B.)

680. A physician while employed as such at the Crow Indian agency, at a salary of $1,400, rendered medical services to certain sick and wounded men of the Seventh Cavalry: *Held*, that payment for such services is prohibited by section 1765, Rev. Stat.—*December* 13, 1878, Vol. 40, p. 675. (U.)

681. Accounts for medical attendance upon, or for expenditures for medicines by an officer while on leave of absence, cannot be allowed, notwithstanding the leave be granted or extended because of illness brought on by reason of injuries received or disease contracted in the line of duty.—*September* 22, 1879, Vol. 42, pp. 27–28; *April* 28, 1882, Vol. 45, pp. 486–487 (U.); Par. 1314, Army Regulations of 1863; G. O. No. 64, A. G. O. of 1873.

682. A physician appointed at an Indian agency, pursuant to section 5 of the act of March 3, 1875, (18 Stat., 449,) or section 169, Rev. Stat., is not a private physician within the meaning of paragraph 1309 of the Army Regulations of 1863.—*December* 13, 1878, Vol. 40, p. 675; *August* 12, 1880, Vol. 43, p. 141. (U.)

683. There is no law authorizing payment through the Treasury, of a bill of a private physician for medical attendance on the wife of an Army officer.—*November* 11, 1880, Vol. 43, p. 328. (U.)

684. The accounting officers have no authority to allow a claim for consultation fees. Their payment is explicitly prohibited by paragraph 1314 of the Army Regulations of 1863.—*September* 8, 1881, Vol. 44, pp. 450–451; *January* 4, 1882, Vol. 45, pp. 70–71; *August* 24, 1883, Vol. 47, pp. 621–624. (U.)

685. Whenever an account for medicines furnished upon prescription of a medical officer or contract surgeon is presented for payment, either to a disbursing officer or to the accounting officers, the apothecary should be required to certify concerning the same as indicated in form "A"; and the officer by whose authority the prescriptions are filled, as indicated in form "B." The account should set forth the date when each prescription is filled and the full name of the officer or enlisted man prescribed for, designating his rank and the command to which he belongs and the number, date, and price of each prescription.

FORM A.

CERTIFICATE OF APOTHECARY.

I certify that the above account is a just and correct statement of medicines furnished by me at ———, to officers and

enlisted men of the United States Army, on the prescriptions herewith submitted; that said medicines were actually furnished on said prescriptions to said officers and enlisted men, respectively, at the dates set forth in said account; and that the prices charged are not in excess of the customary charges of said place.

FORM B.

CERTIFICATE OF OFFICER.

I certify that the foregoing account is correct; that each of the officers and enlisted men therein mentioned was actually on duty at ———, when medicine was furnished for him as stated therein; that none of said medicines were furnished for any persons except officers and enlisted men on duty; and that said medicines could not have been procured at an Army dispensary, for the reason that there was no Army dispensary in or near said place when said medicines were furnished.

If, in any case, the Army dispensary in or near the place is closed when the medicines are required, and, because of this, or other sufficient reason, said medicines are purchased elsewhere, that part of Form "B" which follows the words "for the reason that" should be omitted and a statement of the facts supposed to justify the purchase elsewhere should be inserted in lieu thereof.—*March* 14, 1882, Vol. 45, pp. 335–337; *April* 4, 1882, Vol. 45, pp. 401–402. (U.)

MEDICAL CADETS.

See Bounty, 125.

MEDICINES.

SEE DRUGS AND MEDICINES.

MIDSHIPMEN.

SEE CONSTRUCTION OF STATUTES, 316.

MILEAGE.

EE, ALSO, TRAVEL PAY, 821–827, 863–872, 896–898; TRAVELLING EXPENSES, 1172, 1184; WITNESSES, 1209.

686. Where mileage is drawn by an officer it is regarded as covering all his expenses of travel, and therefore he is not entitled to reimbursement for the actual cost of transportation of his baggage.—*March* 9, 1870, Vol. 33, p. 40. (B.)

687. Paymasters' clerks in the Marine Corps, when journeying on duty under orders, are allowed mileage at the rate of ten cents per mile.*—*January* 6, 1872, Vol. 34, p. 290. (B.)

* Clerks and employees connected with the military service are now allowed, in lieu of mileage, if no transportation be provided, actual travelling expenses, and in addition thereto actual expenses for meals and lodging, "not to exceed four dollars per day west of the Mississippi River and three dollars and a quarter per day east thereof."—See G. O. No. 25, A. G. O., of 1879, G. O. Nos. 76 and 136, A. G. O., of 1882, and G. O. No. 25, A. G. O., of 1884.

688. Where an officer while on duty at Jackson Barracks, La., was detailed as a member of a board of survey sitting at New Orleans, and during the sessions of the board travelled back and forth daily between his station and that city: *Held*, that if not furnished transportation in kind, he was entitled to mileage for the first trip to, and the last trip from New Orleans, but not for any of the intermediate trips.—*February* 16, 1872, Vol. 34, pp. 340–341. (B.)

689 An officer cannot so order himself upon a journey as to entitle himself to mileage.—*April* 30, 1872, Vol. 34, p. 446. (B.)

690. Officers proceeding to new stations, to which they have been ordered while on leave of absence, are entitled to mileage for such distance only as is in excess of that which they would have travelled had they returned to their former stations; if the distance be less, nothing will be allowed.*—*January* 21, 1873, Vol. 35, p 138. (B.)

691. The ruling of this office that an officer could not take transportation in kind for a part of a journey performed under orders, and mileage for the balance thereof, has been modified, and vouchers for transportation in kind and for mileage for different parts of the same journey may be admitted to the credit of disbursing officers.—*April* 4, 1873, Vol. 35, p. 243 (B.)

692. Under the Army appropriation act of July 15, 1870, (16 Stat., 320, sec. 24,) an officer travelling under arrest to place of trial is entitled to mileage.—*October* 14, 1873, Vol. 35, pp. 469–472.† (B.)

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* Overruling section 2138 of the Digest of 1869.

† Overruling section 2082 of the Digest of 1869.

693. Where the contract with an Army surgeon, made prior to the passage of the act of June 16, 1874, (18 Stat., 72,) provided that upon its expiration he should receive "mileage to * * * the place of making the original contract": *Held*, that he was entitled to recover, as "actual expenses," the mileage specified in the contract, less the cost of transportation furnished him.—*November* 24, 1874, Vol. 36, pp. 323–324; *February* 5, 1876, Vol. 37, pp. 411–412. (B.)

694. Where travel is performed in obedience to orders, the law in force at the time the officer receives the order, and not that which was in force at the date the order was issued, governs the case and determines the rate of travel pay or mileage to be allowed.—*August* 31, 1876, Vol. 38, pp. 289–290. (C.)

695. A captain's clerk in the Navy has always been held to be, for the purposes of his travelling expenses, an officer. Where such clerk was furnished, in September, 1876, with transportation from Mare Island, Cal., to Norfolk, Va., *via* the Isthmus, at a cost to the Government of one hundred and twenty dollars: *Held*, that he was not entitled, under the act of June 30, 1876, (19 Stat., 65,) to mileage, or to the difference between mileage and cost.—*May* 23, 1877, Vol. 39, pp. 87–88. (C.)

696. Where an officer of the Navy was detached from his ship at Hong-Kong, China, and ordered to Washington, and transportation furnished by steamer to San Francisco, Cal., and a ticket over the Pacific Railroad from San Francisco to Washington, which ticket, however, did not cover the expense of this travel, but the officer paid from his own funds a portion of the expense: *Held*, that he was entitled to an

allowance to reimburse him for this expenditure, not, however, to exceed eight cents per mile, deducting any payments theretofore made on said account.—*June* 27, 1877, Vol. 39, pp. 189–190. (C.)

697. Only officers of the Army are embraced within the mileage provisions of the act of July 24, 1876, (19 Stat., 100.)—*November* 20, 1877, Vol. 39, p. 472. (U.)

698. The provisions respecting mileage found in section 2 of the act of July 24, 1876, (19 Stat., 100,) and in General Orders No. 97, Adjutant-General's Office, 1876, apply to *all* Army officers who travel "under orders." The case of an officer travelling on duty connected with civil works is no exception, notwithstanding the mileage, in such case, is chargeable to the appropriation for such works and not to the appropriation for the support of the Army.—*February* 23, 1878, Vol. 39, p. 679. (U.)

699. T., a civilian, presented himself pursuant to a notification received from the Surgeon-General, before a board convened in New York City for the examination of candidates for appointment in the medical staff, United States Army. He was examined, appointed an assistant surgeon, and, on May 28, 1876, accepted his commission: *Held*, that he was not entitled to mileage for going from Keokuk to New York to appear before the board, his case not coming within either the letter or spirit of section 24 of the act of July 28, 1866, (14 Stat., 336.)—*October* 17, 1878, Vol. 40, p. 577. (U.)

700. Officers travelling over either of the railroads "on which troops of the United States are entitled to be transported free of charge," (for a list of which see

"Transportation," section 1159, *post*,) are not entitled to mileage. But officers travelling under orders since March 3, 1879, over any and all other roads, are entitled to mileage.—*June* 3, 1879, Vol. 41, pp. 458–462; *March* 13, 1882, Vol. 45, p. 327. (U.)

701. A civilian, who, by request of the Secretary of the Navy, proceeded, in June, 1879, from Saint Louis to New Orleans, for the purpose of piloting a United States steamer up the Mississippi, is not exempted from the provisions of the act of June 16, 1874, (18 Stat., 72,) which provides "that only actual traveling expenses shall be allowed to any person holding employment or appointment under the United States," and is not entitled to mileage; but he is entitled to be reimbursed the amount actually expended by him in the performance of the travel.—*August* 29, 1879, Vol. 41, p. 672. (U.)

702. Under the laws and regulations in force in October, 1875, where an officer's leave of absence was revoked by an order requiring him to proceed to a particular point and perform a specified duty and then rejoin his command, he being thereby compelled to travel by some other than the direct route to his command, such order conferred a right to reimbursement of the actual expenses incurred by him while travelling under it without troops. There has been no material change of either law or regulation on this subject since October, 1875, except such as was made by the substitution of mileage for travelling expenses.—*August* 12, 1879, Vol. 41, pp. 624–627. (U.)

703. In computing distances in mileage cases, the list prepared by the Paymaster-General of the Army, as revised from time to time pursuant to General Or-

ders No. 97, Adjutant-General's Office, of 1876, is followed in settling Navy accounts, in the absence of any list prepared especially for the Navy, except in special cases where it is found to be erroneous.—*December* 17, 1879, Vol. 42, pp. 200–201. (U.)

704. An officer travelling under orders over the Union Pacific Railroad is entitled to mileage. Said road is not a "free road" within the meaning of the act of July 24, 1876, (19 Stat., 100,) and a claim for mileage made by an officer who paid his travelling expenses from his own funds, without expectation of being reimbursed, is not a claim for reimbursement within the terms of the Treasury circular of November 29, 1879.—*February* 17, 1880, Vol. 42, pp. 376–377. (U.)

705. An officer while in Washington on leave of absence, with obligation, until otherwise ordered, to report for duty at the expiration of his leave at San Francisco, subsequently received and obeyed an order to report for duty at New York City; thence he was ordered to Columbus Barracks: *Held*, that he was not entitled to mileage from Washington to New York, but that if he travelled without troops, and no transportation was furnished him, mileage should be allowed from New York to Columbus Barracks.—*September* 2, 1880, Vol. 43, pp. 191–193. (U.)

706. Orders to an officer on leave, merely directing him to rejoin his station at the expiration of his leave, do not carry mileage.—*September* 2 and 4, 1880, Vol. 43, pp. 191–193, 197–199. (U.)

707. If, however, he is ordered to begin duty anew at a point other *and more distant* than the one from which he started on his leave, mileage is allowable for

the *excess* of distance, unless transportation be furnished.—*September* 4, 1880, Vol. 43, pp. 191, 197–198. (U.)

708. In all cases of individual travel where the directing order contains a direction that transportation in kind be furnished, such direction is a bar to payment of mileage unless it be shown by certificate of a proper officer of the Quartermaster's Department that transportation in kind could not be furnished.—*February* 21 and *September* 8, 1880, Vol. 43, pp. 210–211, 340–342; *March* 1 and 13, 1882, Vol. 45, pp. 237–274, 277, 327 (U.); Par. 6, sec. 3, G. O. No. 97, A. G. O., of 1876.

709. But an officer who makes all proper efforts to secure transportation upon orders issued by the Quartermaster's Department, and, failing therein, is compelled to pay fare, is not "furnished transportation" in the sense of the act of July 24, 1876, (19 Stat., 100.)—See case of Major Reese, *February* 13, 1878, Vol. 39, pp. 648–649. (U.)

710. By a special order, of date of September 27, 1877, an officer was ordered from San Francisco, California, to Fort Vancouver, Washington Territory, the order directing that the Quartermaster's Department should furnish the necessary transportation. By a subsequent order the officer was directed to return to San Francisco, charged with the care of certain public property, this order likewise requiring the Quartermaster's Department to furnish transportation. The travel was performed in October, 1877, and the officer drew mileage for the whole distance, going and returning. It does not appear that he made any effort to procure transportation in kind. Special Order No.

43, Headquarters, Department of Columbia, dated April 20, 1878, purports to revoke so much of the aforesaid orders as directed the Quartermaster's Department to furnish transportation: *Held*, that the officer could not, by declining to avail himself of the transportation, entitle himself to mileage, and that the amendment of the orders, made after the travel was performed and the rights of the parties had become fixed, gave him no right to mileage.—*February* 21, 1880, Vol. 43, p. 340; *June* 13, 1882, Vol. 45, pp. 622–623. (U.)

711. Travel performed by a civilian from his home to the place of meeting of an examining board, before which the Secretary of the Navy had informed him that he might present himself for examination for a lieutenancy in the Marine Corps, does not carry mileage with it.—*May* 2, 1881, Vol. 44, p. 47. (U.)

712. Where an officer, owing to differences between certain railroad companies, was obliged to travel by the longer of two routes between the same points, in order to make connections: *Held*, that he was entitled to mileage for the number of miles actually travelled.—*March* 6, 1882, Vol. 45, p. 318. (U.)

713. An order from the Secretary of War directing payment of mileage to an officer for travel previously performed does not alter the officer's rights. Unless, under the law, he was entitled to the mileage before the order was made, he is not entitled to retain any amount which he may draw in consequence of such an order. His right to mileage, if any he has, vested when the travel was performed, and is in no way dependent upon any subsequent action or order.—*March* 7, 1882, Vol. 45, pp. 304–305; *April* 27, 1883, Vol.

47, pp. 330–331; *July* 26, 1883, Vol. 47, pp. 480–481. (U.)

714. The law does not authorize the payment of mileage to an officer going on, or returning from leave of absence, or for constructive journeys.—*June* 1, 1882, Vol. 45, p. 595. (U.)

715. An officer was ordered to conduct troops from one point to another and, leaving the troops, to return; the Quartermaster's Department to furnish transportation. He did not apply for or procure transportation for the return trip and, mileage being refused him, a new order was issued purporting to so amend the original order as to exclude the requirement that transportation should be furnished therefor. Mileage was then paid, but was afterwards suspended against him and the paymaster who paid him; whereupon an order was issued, stating that as the officer was unaccompanied by troops on the return trip, he was entitled to mileage, it having been the intention that he should draw mileage: *Held*, that the intention of the authority issuing the order is to be collected from the order itself, and that the officer should be charged with the difference between the amount of the mileage drawn and the amount it would have cost the United States if transportation had been furnished for the return journey as prescribed in the original order.—*February* 21, 1880, Vol. 43, p. 340; *December* 31, 1881, and *June* 13, 1882, Vol. 45, pp. 63, 622–623. See, also, Vol. 44, p. 640, and Vol. 45, pp. 64, 328, 565–566. (U.)

716. The act of July 24, 1876, (19 Stat., 100,) providing that when any officer travels under orders and is not furnished transportation, he shall be allowed

eight cents a mile, and no more, for each mile actually travelled under such order—distances to be calculated by the shortest usually travelled route—is construed by this office to mean, first, that mileage can in no case be allowed for any distance in excess of the distance actually travelled; and, second, that if the distance actually travelled exceed the distance by the shortest usually travelled route, mileage can be allowed only for the distance by the shortest usually travelled route.—*March* 4, 1882, Vol. 45, pp. 291–294; *March* 11, 1882, *ibid.*, p. 318; *April* 12, 1883, Vol. 47, pp. 177–179. (U.)

MUSTERING OFFICER.

See Accountability, 1.

NAMES.

See Claims, 271–272; Department Practice, 403.

NATIONAL HOME FOR DISABLED VOLUNTEER SOLDIERS.

SEE, ALSO, DESERTERS, 422; PENSION AGENTS, 1012.

717. The right to pay and bounty did not vest in a soldier until he had complied with the conditions of his contract and acquired such right by faithful service. Until it vested he could not forfeit it. Hence, as no pay or allowance accrued to a soldier during the period of his desertion or absence without leave, none could be forfeited by him so as to become payable, under the act of March 21, 1866, (14 Stat., 10,) to "The National Home for Disabled Volunteer Soldiers."—*August* 18, 1869, Vol. 32, pp. 406–409. (B.)

718. A proper construction of section 2 of the joint resolution of March 1, 1870, (16 Stat., 370,) gives to the National Asylum of Disabled Volunteer Soldiers for the support of its beneficiaries all moneys withheld from deserters from the volunteer forces, whether such deserters may have been previously assigned to any military organization or not. It is not necessary that they should have been borne on the rolls of companies or regiments and marked thereon as deserters. An official list of deserters furnished by the proper officer at a draft rendezvous is as much a "roll" within the meaning of the law as a muster or pay roll.—*April* 18, 1870, Vol. 33, p. 94. (B.)

719. Moneys realized from sales made by the "National Home for Disabled Volunteer Soldiers," need not be covered into the Treasury. They are not proceeds of Government property within the meaning

of section 3618, Rev. Stat.—*November* 4, 1878, Vol. 40, pp. 609–611. (U.)

720. It appearing that the whole amount for which, on March 31, 1879, a requisition was made upon the Secretary of War by the managers of "The National Home for Disabled Volunteer Soldiers," was desired for the purpose of meeting current expenses of the four branches of the Home for the quarter ending June 30, 1879, and for construction, repairs, outdoor relief, and incidental expenses of the Home for said quarter: *Held*, that in view of section 3690, Rev. Stat., and the act of March 3, 1875, (18 Stat., 360,) no part of any balance of the appropriation for the support of said Home for the fiscal year ending June 30, 187×, remaining unexpended at the expiration of that fiscal year, should be included in any warrant to be issued in favor of said Home upon the requisition so issued in 1879.—*November* 4, 1878, Vol. 40, pp. 609–611; *April* 10, 1879, Vol. 41, pp. 311–312. (U.)

721. It is not within the jurisdiction of the accounting officers to state the balance on an account between the "National Home for Disabled Volunteer Soldiers" and its officers, or between the "Home" and its branches.—*August* 23, 1883, Vol. 47, pp. 619–620. (U.)

722. While the corporation known as "The National Home for Disabled Volunteer Soldiers" is a trustee, and while its acts are in many respects similar in their effects to those performed by disbursing officers, its functions are, in some particulars, entirely different from those of an ordinary disbursing officer, inasmuch as the money placed in the custody of the

latter remains the sole and exclusive property of the United States and is still part of the funds of the Treasury; whereas, when money is lawfully placed in the custody of the "Home," in pursuance of the act of March 3, 1875, (18 Stat., 359–360,) the legal title vests in that corporation for the time being, and until Congress shall otherwise direct.—*August* 23, 1883, Vol. 47, pp. 619–620. (U.)

NAVY REGULATIONS.

See Construction of Statutes, 312; Disbursing Officers, 441; Travelling Expenses, 1187; Wills, 1205.

NOTARIES PUBLIC.

See, also, Oaths and Affidavits, 726.

723. Where the local laws are silent on the subject, a notary public is entitled to his fee for each and every copy of an affidavit to which he affixes his signature and seal.—*October* 24, 1870, Vol. 33, p. 314. (B.)

724. The act of September 16, 1850, (9 Stat., 458,) authorizes oaths, affirmations, and acknowledgments to be taken before a notary public and provides that when certified under the hand and official seal of such notary, they are to have the same effect as if taken before a justice of the peace. Hence, in all cases to be settled under the United States laws, vouchers executed before a notary must be certified under the notarial seal, even though executed in States in which a seal is not required.—*December* 19, 1870, Vol. 33, pp. 395–396. (B.)

725. An employee of the Government cannot lawfully charge notarial fees against the United States.—*April* 30, 1872, Vol. 34, pp. 445–446. (B.)

OATHS AND AFFIDAVITS.*

See, also, Bonds, 102; Clerks, 288; Notaries Public, 723–724; Pay and Allowances, 755.

726. The act of February 26, 1853, (10 Stat., 170,) does not interdict an employee of the Government from receiving the established fees for administering oaths and taking acknowledgments, under a commis-

*For a recapitulation of the several statutes authorizing certain civil and military officers to administer oaths in special cases, see Vol. 34, p. 687.—*October* 17, 1872. (B.)

sion from a State government, as notary public or justice of the peace.—*July* 28, 1870, Vol. 33, p. 360 (B.)

OFFICE.

See, also, Extra Compensation, 493; Indian Agents, 603; Pay and Allowances, 759.

728. When an incumbent of an office accepts a position incompatible with the one held by him, the acceptance of the new position is an abandonment or resignation of the office theretofore held.—*January* 19, 1881, Vol. 43, pp. 514–519. (U.)

729. The office becomes vacant upon the acceptance of the incompatible position. 2 Hill, 93; 2 Term Reports, 87; 9 Gill and Johnson, 365; Angel & Ames on Corporations, Par. 434; 1 Dillon on Corp., Par. 164.—*Ibid.*

730. Where both offices are conferred by the same appointing power, the appointment to an incompatible office has the effect to remove from the former position. Rex *v.* Pateman, 2 Term Rep., 777.—*Ibid.*

OFFICERS.

SEE ADJUTANT, 17; ASSIGNMENT, 61; BOUNTY, 217; COMPENSATION, 297; CONSTRUCTION OF STATUTES, 310, 315; CONTRACTS, 325; EXTRA COMPENSATION, 494.

ORDNANCE AND ORDNANCE STORES.

SEE, ALSO, APPROPRIATIONS, 26, 32; CONTRACTS, 342; RAILROADS, 1050

731. In cases where loss or destruction of, or damage to ordnance or ordnance stores has occurred in any manner whatever, and the money value thereof has been collected and deposited with the United States Treasurer, such money deposit should be covered in as "miscellaneous receipts," under section 5 of the appropriation act of May 8, 1872, (17 Stat., 83.)—*February* 24, 1874, Vol. 35, p. 632. (B.)

732. Amounts recovered and deposited for damaged, lost, or destroyed ordnance or ordnance stores are to be covered in to the credit of the appropriation for the fiscal year in which the deposit was made, when no designation of the appropriation is contained in the certificate of deposit; but when the certificate designates the fiscal year in which the amount was originally drawn, then to the appropriation of that year.—*November* 24 and *December* 3, 1874, Vol. 36, pp. 323, 334–335. (B.)

733. Under the clause in the sundry civil appropriation act of March 3, 1875, (18 Stat., 388,) providing for the sale of useless ordnance material, the

net proceeds of such sales constitute a permanent appropriation of seventy-five thousand dollars a year, if the sales reach that amount, and become indefinitely available in the future for the purchase of new material without appropriation. The mode of procuring the new material is left to the discretion of the proper Department and may be either by purchase of manufactured material or by manufacture at the Government workshops.—*March* 15, 1875, Vol. 36, p. 491 (B.); *July* 21, 1879, Vol. 41, pp. 580–581. (U.)

734. The act of March 3, 1875, (18 Stat., 388,) authorizes all the labor necessary for the preparation of the materials for sale to the best advantage, and for their transportation to the place of sale; and all reasonable expenses of this character are to be deducted from the gross receipts, and the net proceeds only applied in conformity with the act.—*April* 23, 1875, Vol. 36, pp. 561–562. (B.)

735. It is a well settled rule that moneys recovered for lost, injured, or destroyed ordnance stores should be covered in to the fund from which the stores were purchased. In the absence of satisfactory evidence to the contrary, the accounting officers will accept the decision of the War Department as to the identity of this fund as conclusive thereof.—*October* 31, 1877, Vol. 39, pp. 439–441. (U.)

OVERPAYMENT.

See Accountability, 1, 2; Bounty, 187; Pay and Allowances, 805, 907; Paymasters, 962; Set-off, 1102; Settlements, 1107–1108.

PARDON.

SEE, ALSO, CLAIMS, 258; PAY AND ALLOWANCES, 765, 906.

736. Where the sentence of a general court martial was that the soldier should be imprisoned at hard labor with forfeiture of pay proper, due or to become due: *Held*, that a subsequent pardon did not restore to the soldier the right to draw pay for the period between the date of sentence and the date of pardon.—*August* 11, 1869, Vol. 32, pp. 398–399. (B.)

PARTNERS—PARTNERSHIP.

SEE, ALSO, ATTORNEYS, 73–74; DEPARTMENT PRACTICE, 403; DISBURSING OFFICERS, 435; ENDORSEMENT, 456; POWERS OF ATTORNEY, 1027; RECEIPTS, 1077.

737. The interest of the estate of a deceased partner in a Government contract cannot lawfully be transferred by act of the parties to the surviving partner; but work under the contract (for constructing locks at The Cascades, Oregon) may proceed under the joint management of the surviving partner and the representative of the decedent's estate. Under the laws of the State of Oregon, the surviving partner may become "administrator of the partnership," in which case his powers, under section 1071 of the Revised Statutes of that State, "extend to the settlement of the partnership business."—*March* 11, 1879, Vol. 41, pp. 203–205. (U.)

PAY AND ALLOWANCES.

SEE, ALSO, APPROPRIATIONS, 55; ASSIGNMENTS, 61; CADETS, 235; COMPENSATION, 295; PAYMASTERS, 963; TIME, 1142.

I.—OF THE ARMY.

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I.—OF THE ARMY.

A.—Officers' Pay.

a.—General principles and cases.

See, also, Disbursing Officers, 426; Fuel and Quarters, 509; Horses, 552; Indebtedness, 562; Jurisdiction, 652–653, 657; Leave of Absence, 668, 671; Set-off, 1103; State Claims, 1117.

738. The law of January 25, 1828, (4 Stat., 246, section 1766, Rev. Stat.,) takes away all discretion from the accounting officers to allow an officer who is in arrears any portion of his pay until he shall have accounted for and paid into the Treasury all sums for which he may be liable.—*January* 4, 1871, Vol. 33, p. 423. (B.)

739. The officers and men of Captain Goldman Bryson's mounted volunteers of Cherokee County, North Carolina, are entitled to pay for so much of the time between July 12, 1863, and May 15, 1865, as the evidence presented in each particular case shall show that the applicant was a member of said organization and in actual service.*—*March* 31, 1871, Vol. 33, pp. 554–555. (B.)

740. Restoration to rank and service, or antedated rank, does not carry with it the right to increased pay unless specially authorized by law.—*April* 2, 1875, Vol. 36, pp. 525–526. (B.)

741. An officer of the Army who is ordered, even at his own request, to proceed to a particular place and there await orders, is not "absent from duty with leave," and is entitled to full pay and allowances.—

*But see letter from this office to the Adjutant-General, of date of April 9, 1884, (vol. 48, pp. 582–584,) to the effect that before action be taken by the accounting officers, all necessary amendments of the soldier's military history should be made in the War Department.

July 18, 1877, Vol. 39, pp. 217–218 (C.); U. S. *v.* Williamson, 23 Wall., 511.

742. Where an officer has received pay or emolument to which, in the opinion of the accounting officers, he was clearly not entitled, there is no law or practice that requires the institution by Government, at the officer's request, of a suit at law to test the matter in the courts.—*November* 7, 1854, Vol. 17, p. 443 (B.); *October* 17, 1877, Vol. 39, pp. 413–414. (U.)

743. An officer enrolled and mustered for three years at Staten Island, New York, on August 14, 1861, was captured May 1, 1864; escaped from Columbia, South Carolina, February 17, 1865; joined Sherman's army and was assigned to duty at Warsaw Road, North Carolina, March 15, 1865; was relieved from duty at Wilmington, North Carolina, March 31, 1865; embarked thence April 1, and reached New York City April 13; was mustered out by special order April 24, and paid to include March 31, 1865, with certain travelling allowances The muster-out was amended by the War Department on October 23, 1877, to read "discharged at New York City April 13, 1865, on which date he arrived on U. S. transport Patapsco": *Held*, that he was entitled to pay from April 1 to 12, 1865, inclusive; to four rations per day for thirteen days, viz, from March 31 to April 12, 1865, inclusive; to additional pay, under act of March 3, 1865, for servant's clothing at the rate of four dollars per month, from the 3d to the 30th of March, 1865, (allowance for a servant *after* March 30, 1865, not to be paid without proof of actual employment;) and to the additional three months' pay proper, under acts of March 3, 1865, (13 Stat., 497,) and July 13, 1866,

(14 Stat., 94.)—*November* 8, 1877, Vol. 39, pp. 447–451. (U.)

744. A mere wish, expressed prior to his death, by a deceased Army officer, that his property should be applied to the purpose of endowing a bed in the Clifton Springs, New York, Sanitarium, cannot be acted upon by the accounting officers. If the officer died intestate, the pay due him from the United States must remain in the Treasury until a right to receive the same be established by the proper heir or legal representative.—*March* 26, 1878, Vol. 40, p. 83. (U.)

745. A private act for the relief of a chaplain who had been wrongfully removed for a time from his chaplaincy, is remedial and should be construed liberally. Where such an act directed payment to a deceased chaplain's widow of the amount of pay and allowances due the deceased as a chaplain of the Army for a given period: *Held*, that claimant should be allowed all the pay and all the allowances authorized by the Regulations for a chaplain at a chaplain post, and commutation at the rates established for the time and place —*July* 8, 1878, Vol. 40, pp. 327–329. (U.)

746. In ordinary cases, where there is nothing to indicate that vouchers presented for payment were transferred before they became due, compliance with the rule of the Pay Department requiring evidence that the officer was alive and in service when the account matured, is probably all that is necessary; but when there is conclusive evidence that the assignment was made in disregard of section 1349 of Army Regulations of 1863, which forbids an officer to pass away his pay account not actually due at the time, payment cannot properly be made to the party claiming as assignee. The fact that it may be absolutely certain

that the United States will not be called upon to pay the amount a second time, cannot be allowed to have any weight.—*September* 7, 1878, Vol. 40, pp. 471–472. (U.)

747. Professor Mitchie, having held the position of assistant professor at the West Point Military Academy from 1866 to 1871, and that of professor from the latter year to 1878, claimed the pay of a colonel under section 1336, Rev. Stat.: *Held*, that he was entitled thereto; the words "service at the Academy," employed in that section meaning *service rendered at the Academy*, whether as full professor or otherwise.*—*October* 29, 1878, Vol. 40, pp. 596–600. (U.)

748. The monthly pay of the officers and enlisted men of the Army is prescribed by statute, and so long as a person is an officer or an enlisted man he is entitled to the pay as prescribed, whether he has actually performed military service or not, unless his right thereto has been forfeited or lost in consequence of some provision of law or of regulations made in pursuance of law.†—*April* 16, 1879, Vol. 41, pp 328–329. (U.)

749. The words "pay, emoluments, and allowances of cavalry officers," as used in the act of February 27, 1877, (19 Stat., 243,) refer to the higher rates of pay prescribed by section 1261, Rev. Stat., to com-

*By section 4 of the Army appropriation act of June 23, 1879, (21 Stat., 34,) section 1336, Rev. Stat., was amended by inserting after the word "service," in the first line, the words "as professor." Hence, the Comptroller decided on July 16, 1879, (Vol. 41, p. 572,) that Professor Mitchie's pay, *as colonel*, continued only to the date of said last mentioned act.

†The doctrine long held by this office that, upon general principles, pay follows service and cannot be allowed to an officer or soldier for time during which he was withdrawn from actual military service, unless some law or regulation explicitly authorizes payment for such time, appears to have been abandoned.

pany officers *mounted.*—*November* 1, 1879, Vol. 42, pp 91–93. (U.)

750. While as a rule an officer is entitled to pay from the date of the acceptance of an appointment, yet nothing purporting to be an acceptance will be one in reality, within the meaning of the rule, unless by reason thereof the appointee becomes liable to duty in his new capacity. Hence, where a lieutenant, at the time of the issuing of the regimental order announcing his appointment to the adjutancy of his regiment, was on detached duty by virtue of an order of an officer superior to the regimental commander: *Held*, that his pay as adjutant did not begin to run until he was relieved from such detached duty, and not then unless he had meanwhile manifested in some manner his acceptance of the appointment; but such acceptance may be effectually shown in other ways than by a formal letter of acceptance.—*September* 6, 1878, Vol. 40, pp. 467–471; *April* 23, 1880, Vol. 42, pp. 563–564. (U.) As, for example, by his actual entrance upon the performance of the appropriate duties of the grade to which he has been appointed.—*October* 1, 1869, Vol. 32, pp. 458–459. (B.)

751. An officer of the First Artillery was mustered out of service under the provisions of section 11 of the act of July 15, 1870, (16 Stat., 315,) and drew the one year's pay thereby allowed. He re-entered the service as a paymaster, in April, 1875, and thenceforward (under a misapprehension of the law as applicable to his case) drew but fifty per cent. of his pay as such paymaster until the undrawn moiety equalled the sum of the one year's pay drawn by him at muster-out. Subsequently he presented a claim for the undrawn fifty per cent of his pay as paymaster:

Held, that it was not his duty to refund to the United States the said year's pay, and that his claim should be allowed.—*January* 10, 1880, Vol. 42, pp. 687–689 (U.); Jurisdiction, 652, *ante*.

752. Section 1766, Rev. Stat., does not give to the accounting officers discretion on the subject of stoppage of a part only of an officer's pay.—*July* 24, 1880, Vol. 43, p. 98. (U.)

753. Where the contract of an acting assistant surgeon was annulled to enable him to receive an appointment as assistant surgeon of a regiment of Missouri volunteers, and he was then commissioned by the governor of that State and afterwards duly mustered into the United States service: *Held*, that his right to pay as an acting assistant surgeon terminated with the day on which his contract was annulled, while his right to pay as an officer began with the day on which he was mustered in; and that such services as were rendered by him during the intervening period were voluntary and created no legal claim upon the Government.—*September* 8, 1881, Vol. 44, pp. 452–454; 16 Opin., 567–568. (U.)

754. C. was appointed a lieutenant, United States Army, in April, 1877, to fill up a vacancy which happened during the recess of the Senate. His commission expired, and his right to pay ceased December 3, 1877, when the session of the Senate next succeeding his appointment ended and when a regular session of Congress began, as required by the Constitution. (See 16 Opin., 567.) Meanwhile he was out on a scouting expedition and did not receive from the Adjutant-General notice of his non-confirmation, till after his return, December 24, 1877: *Held*, that he was not entitled to pay after December 3, 1877; that he was

bound to know that his temporary appointment could not endure beyond that date, and that his services thereafter were voluntary and created no legal right to pay.—*July* 29, 1881, Vol. 44, pp. 347, 488; *July* 11, 1882, Vol. 46, pp. 33–34. (U.)

755. One who is appointed to office in the Army becomes an officer when he accepts his appointment, and, in the absence of legislation to the contrary, is entitled to pay from the date of acceptance; but, under the act of July 2, 1862, (sec. 1756, Rev. Stat.,) pay cannot be allowed from any date earlier than the date on which he takes the oath prescribed therein.—*September* 1, 1881, Vol. 44, p. 436. (U.)

756. Section 24 of the act of July 15, 1870, (16 Stat., 320,) by which the pay of the officers of the Army is established, will be regarded as in force from its date only; but settlements heretofore made for pay and allowances accruing from the first to the fifteenth of July, 1870, will not be reviewed on this account.—*April* 21, 1882, Vol. 45, p. 499. (U.)

757. An officer in the Army was retired with the rank of colonel, December 15, 1870. His rank was reduced to that of lieutenant-colonel March 3, 1875. He completed fifteen years of service on June 3, 1877. The act for his relief, approved March 13, 1878, (20 Stat., 510,) restored him to "the full rank of colonel * * with pay of such rank," and provided that he should thereafter "hold and receive the rank and pay of colonel upon the list of the retired officers of the Army": *Held*, that from and after the date of said act he was entitled to seventy-five per cent. of $4,500 per annum, and no more.—*July* 13, 1882, Vol. 46, pp. 47–52. (U.)

758. Settlement with a paymaster is not a settlement with an officer paid by him; and the United States have the right to apply pay due an officer to the extinguishment of any balance due from him (15 Peters, 370, cited in note on page 90 of Scott's Digest.)—*February* 9, 1884, Vol. 48, pp. 379–381 (U.)

759. S. was nominated to and confirmed by the Senate, and appointed by the President, a major-general of volunteers. While holding that office and engaged in the performance of its duties, he accepted an appointment to the office of colonel in the Regular Army: *Held*, that by accepting the latter office he did not vacate the former, but continued to be a major-general and entitled to pay as such until formally mustered out of the volunteer service at a later date—*March* 17, 1884, Vol. 48, p. 505. (U.)

b.—Commission—muster.

760 The joint resolutions of July 26, 1866, (14 Stat., 368,) and July 11, 1870, (16 Stat., 385,) for the relief of certain unmustered officers of the Army are retroactive; but section 3 of the latter resolution provides that the same "shall not be construed to apply to cases in which, under the laws and Army Regulations existing at the time, there could have been no lawful muster into service even after the actual receipt of the commission."—*November* 14, 1871, Vol. 34, pp. 230–231. (B.)

761. The War Department has exclusive jurisdiction of applications of volunteer officers for alteration of muster, and it is the province of that Department to determine whether joint resolution No. 102 of July 11, 1870, (16 Stat., 385,) applies to any particular

case. An officer commissioned February 18, 1865, but mustered as of date of April 4, 1865, cannot be allowed pay for the period between date of commission and date of muster, nor can he be allowed the three months' pay proper under the acts of March 3, 1865, (13 Stat., 497, sec. 4,) and July 13, 1866, (14 Stat., 94,) until the necessary alteration of muster shall have been made by the adjutant-general of the Army.—*November* 12, 1878, Vol. 40, pp. 621–622; *December* 10, 1881, Vol. 45, pp. 2–3. (U.)

c.—Termination of service—death, discharge, dismissal, resignation.

762. No pay or emoluments can be allowed to an officer who has been dismissed the service and is afterwards reinstated, for the period between the date of dismissal and the date of restoration.—*April* 21, 1870, Vol. 33, p. 100. (B.)

763. Where an officer's resignation was accepted April 6, 1865, but notice of its acceptance was not received by him until the 13th of the month, up to which date he continued to serve and to which date he was paid: *Held*, that his connection with the Army was officially closed on April 6; that the pay allowed him after that date was in the nature of a *quantum meruit* for services rendered in good faith before receipt of notice of discharge, and that he was not entitled to the three months' pay proper provided for by section 4 of the act of March 3, 1865, (13 Stat., 397,) as construed by the act of July 13, 1866, (14 Stat., 94.)—*December* 29, 1870, Vol. 33, pp. 418–419. (B.)

764. The order of the War Department, dated June 26, 1865, discharging an officer who was wounded

and in hospital, was not received by him until after his regiment had been mustered out: *Held*, that he was entitled to pay to the date of the muster out of the regiment, (August 28, 1865,) and to travelling allowance to his home.—*March* 14, 1876, Vol. 37, pp 535–536. (C.)

765. Where an officer is cashiered and dismissed the service, but subsequently pardoned by the President and restored to his former rank and position, he is not entitled to pay for the period between dismissal and restoration, the pardon containing no words that indicate an intention to make the restoration retrospective.—*July* 31, 1877, Vol. 39, p. 259. (C.)

766. An officer, not a prisoner of war, must be considered as mustered out with his regiment and as entitled to receive pay only up to the date of the regimental muster-out, notwithstanding his own muster-out papers are not received by him till afterwards.—*July* 31, 1877, Vol. 39, pp. 260–261. (C.)

767. An officer who has been dismissed the service by order or direction of the President can be restored only by *a new appointment*. It is not in the power of the President who directed the dismissal, or of his successor, to revoke the order of dismissal or to restore the officer to the status occupied by him when dismissed. Where, therefore, an officer was dismissed the service, by order of President Lincoln, on the 27th of March, 1865, and an order was issued by direction of President Johnson on June 9, 1865, which in terms revoked the order of dismissal and restored the officer to his former position, and said officer performed duty from June 9, 1865, to October 7, 1865, and was then mustered out of service, having drawn pay from June 9 to September 30, 1865, and

afterwards claimed pay from March 27 to June 9, 1865, and from September 30 to October 7, 1865; and also the three months' pay authorized by the acts of March 3, 1865, (13 Stat., 497,) and July 13, 1866, (14 Stat., 94:) *Held*, that no part of his claim should be allowed and that he was improperly paid for the period from June 9 to September 30.—*December* 10, 1878, Vol. 41, pp. 113–127; *December* 23, 1882, Vol. 46, pp. 563–566. (U.)

768. An officer honorably discharged after failure to pass the required examination before a military examining board, but who continues on duty until notice of his discharge is received at his post or by himself, is entitled to pay to the date of receipt of the notice.—*April* 4, 1879, Vol. 41, pp. 290–291. (U.)

769. An officer is entitled to full pay and allowance up to the date of the acceptance of his resignation, without reference to the reasons that may have influenced him to tender the same, and irrespective of the question whether or not he did duty up to that date.—*January* 12, 1880, Vol. 42, pp. 275–277. (U.) See, also, Williamson's case, 23 Wall., 411.

770. Where it appeared that the duties of a registering officer at large, appointed June 10, 1867, under the act of March 23, 1867, to provide for the more efficient government of the rebel States, (15 Stat., 2,) were fully performed by October 29, 1867, and that the commanding general of the district limited the pay of the officer to a period expiring on October 29, 1867: *Held*, that the action of the commanding general was intended to and did work the officer's discharge, and that he was not entitled to pay after said date, notwithstanding the fact that from a report of the Adjutant-General it appeared that on

June 29, 1868, the officer tendered his resignation and that it was accepted by the War Department to take effect at the date of tender: *Held*, also, that the resignation and its acceptance were unnecessary and of no effect, inasmuch as the officer was already out of service.—*March* 26, 1880, Vol. 42, pp. 512–514. (U.)

771. Where an officer of the Army was, by a special order, Adjutant-General's Office, dismissed the service "with loss of all pay and allowance": *Held*, that he forfeited pay to and including the date of the *receipt* by him of said order, it appearing that he was "present and on duty" at that date.—*February* 23, 1881, Vol. 43, pp. 594–595. (U.)

d.—Extra pay.

SEE, ALSO, ASSISTANT COMMISSARY, 65–69; OFFICERS' PAY (*a*,) 743; SET-OFF, 1102.

772. An officer discharged *on* April 9, 1865, is not entitled to the three months' pay proper provided for by the act of July 13, 1866, (14 Stat., 94.)—*January* 11, 1869, Vol. 32, p. 27. (B.)

773. "Muster out of service" is made a condition precedent to payment of the three months' pay provided for by the act of March 3, 1865, (13 Stat., 497.) Hence, judge-advocates of the Army who were in commission prior to said act, as volunteer officers, but who, by the act of February 25, 1867, (14 Stat., 410,) were changed to the regular branch of the Army without discharge or reappointment, are not entitled thereto.—*April* 30, 1869, Vol. 32, pp. 211–213. (B.)

774. Where by private act approved March 1, 1869, (15 Stat., 453,) the Paymaster-General was directed to pay to W. the full pay and allowances of a captain

of infantry from October 15, 1864, to August 8, 1865: *Held*, that he was entitled to the three months' pay proper allowed to officers at muster-out by section 4 of the act of March 3, 1865, (14 Stat., 497.)—*January* 15, 1870, Vol. 32, pp. 593–594. (B.)

775. An additional paymaster who accepts a position as paymaster, United States Army, without any time intervening between the date of muster-out as additional paymaster and muster-in as paymaster, is entitled to the three months' pay proper provided for in the act of March 3, 1865, (13 Stat., 497, section 4.)—*March* 4, 1872, Vol. 34, pp. 366–367. (B.)

776. The three months' extra pay provided for by section 4 of the act of March 3, 1865, (13 Stat., 497,) is not a gratuity but a debt, and descends to the heirs of such deceased officers as were entitled to receive, but died before receiving the same.*—*February* 28, 1876, Vol. 37, pp. 489–491. (C.)

777. An officer who died April 9, 1865, held to be not entitled, under the act of July 13, 1866, (14 Stat., 94,) to the three months' extra pay proper provided for by section 4 of the act of March 3, 1865, (13 Stat., 497.)—*May* 21, 1877, Vol. 39, pp. 85–86. (C.)

778. Whether an officer was in service March 3, 1865, (the date of the act allowing three months' pay proper, 13 Stat., 497,) is a military question in the determination of which the decision of the Secretary of War has always been held to be binding upon the accounting officers.—*August* 7, 1877, Vol. 39, p. 278. (C.)

779. The benefits of section 4 of the act of March 3, 1865, (13 Stat., 497,) and of the act of July 13, 1866, (14 Stat., 94,) have never been extended to

* Overruling sections 1245–1246 of Digest of 1869.

the officers of the Missouri State Militia.—*October* 25, 1877, Vol. 39, p. 424. (U.)

780. Military store-keepers, having been recognized by the War Department as officers of the Army, are entitled to the thirty-three and one-third per cent. increase of pay proper provided for by section 1 of the act of March 2, 1867, (14 Stat., 422.)—*May* 31, 1873, Vol. 35, p. 342. (B.)

781. An officer in the Mexican war, who withdrew from the service by resignation, is not entitled to the three months' extra pay provided for by the act of February 19, 1879, (20 Stat., 316.)—*May* 23, 1881, Vol. 44, pp. 129–130. (U.)

782. The widows and children of officers and soldiers who were in the Mexican war and who have since died without having been previously discharged, are within the limitations of the act of July 19, 1848, (9 Stat., 248,) and, therefore, are not entitled to the three months' extra pay provided for by that act.*—*May* 23, 1881, Vol. 44, p. 131. (U.)

782½. No authority *now* exists for the payment of the three months' extra pay authorized by order of the Secretary of War of date of May 30, 1865, to be paid to certain returned prisoners of war.—*October* 1, 1878, Vol. 40, pp. 536–537. (U.)

783. Neither officers of the Regular Army who were retained in the service after the Mexican war, nor the statutory representatives of Regular Army

* In the cases of The United States *v.* North, and The United States *v.* Emory, it has since been decided that officers and soldiers who served until "the war was over" or until they were "ordered or mustered out of that service" may be said to "have served out the term of their engagement" or to have been "honorably discharged," within the meaning of those terms as used in the act of 1848.—United States Supreme Court, October Term, 1884.

officers so retained and who afterwards died in the service, are entitled to the extra pay provided by the acts of July 19, 1848, (9 Stat., 247,) and February 19, 1879, (20 Stat., 316.)*—*November* 19, 1881, Vol. 44, pp. 635–637; *May* 13, 1882, Vol. 45, p. 533 (U.); 5 Opin., 168.

784. Officers of the regular forces, although they served in the Mexican war in volunteer corps under commissions from State authorities, are not entitled to the extra pay provided by the acts of July 19, 1848, (9 Stat., 247,) and February 19, 1879, (20 Stat., 316.)*—*December* 9, 1881, Vol. 44, pp. 693–695; *May* 13, 1882, Vol. 45, p. 533. (U.)

785. An officer who was discharged on his own application, on any grounds which did not render him incapable of serving out the term of his engagement, is not entitled to the extra pay provided by the acts of July 19, 1848, (9 Stat., 247,) and February 19, 1879, (20 Stat., 316,) even though he resigned after and because hostilities had terminated, his regiment not being yet mustered out.—*November* 19, 1881, Vol. 44, pp. 633–635; *May* 13, 1882, Vol. 45, p. 533. (U.)

786. The fact that an officer or soldier of the Mexican war was disloyal during the rebellion does not constitute a bar to the payment of an otherwise valid claim for the extra pay provided by the acts of July 19, 1848, (9 Stat., 247,) and February 19, 1879, (20 Stat., 316.)—*May* 13, 1882, Vol. 45, p. 533. (U.)

787. A contract-surgeon is not an officer of the Army, and therefore is not entitled to the additional pay allowed by section 1 of the act of March 2, 1867, (14 Stat., 422.)—*July* 11, 1882, Vol. 46, pp. 31–33. (U.)

* See note on p. 273.

788. Every officer, regular or volunteer, who was in service during any part of the period of two years from July 1, 1866, is entitled to the benefits of the first section of the act of March 2, 1867, (14 Stat., 422,) authorizing payment of an addition of thirty-three and one-third per centum to their pay proper.*—*January* 18, 1882, Vol. 45, pp. 123–129; *March* 11, 1882, *Ibid.*, pp. 320–321. (U.)

789. J., late captain Company C, Thirtieth United States Colored Troops, was discharged, on tender of resignation, by an order from the War Department, dated April 3, 1865. Notice of his discharge was not received by him until April 17, 1865, up to which date he continued on duty and drew his pay. He claimed the three months' pay proper allowed by the act of July 13, 1866, (14 Stat., 94:) *Held*, that acceptance of resignation was not perfected until notice thereof was duly given; that the date of presentation of resignation was immaterial, and that every officer honorably discharged after April 9, 1865, whose case fulfils all other requirements of the act, is entitled to the three months' pay proper thereunder.—*July* 6, 1882, Vol. 46, pp. 11–12. (U.)

790. The extra pay provided by the acts of July 19, 1848, (9 Stat., 247,) and February 19, 1879, (20 Stat., 316,) can be paid only to those, or to the statutory representatives of those, who were in "actual service" in the war with Mexico; and claimants must furnish evidence that said extra pay has not already been received.—*November* 21, 1881, Vol. 44, pp. 643–644; *May* 13, 1882, Vol. 45, pp. 533–534. (U.)

791. The medical storekeepers appointed under the act of May 20, 1862, (12 Stat., 403–404,) are held to

* Overruling section 1220 of the Digest of 1869.

be officers of the Regular Army, and, consequently, are not entitled to the three months' pay proper provided by the acts of March 3, 1865, (13 Stat., 497,) and July 13, 1866, (14 Stat., 94.)—*December* 6, 1882, Vol. 46, pp. 490–492. (U.)

792. Where extra pay or any allowance is made payable upon discharge from the service, and the law makes no provision to the contrary, the accounting officers have always held that payment is to be made at the rate to which the officer or soldier was entitled under the law at the time of discharge. The three months' extra pay allowed to certain officers and soldiers who served in the Mexican war, the three months' pay proper allowed to certain volunteer officers discharged at the close of the rebellion, and travel pay as well as travel subsistence, have been uniformly paid in accordance with this view of the law.—*April* 29, 1884, Vol. 48, pp. 658–662. (U.)

e.—Mounted pay.

793. Lieutenant B., an infantry officer, duly assigned to duty which required him to be mounted, claimed mounted pay for a period beginning after December 1, 1873, and ending before February 27, 1877: *Held*, that under section 24 of the act of July 15, 1870, (sec. 1261, Rev. Stat.,) he was entitled thereto.—*June* 14, 1878, Vol. 40, pp. 283–287. (U.)

794. An officer is not regarded as mounted and, therefore, as entitled to the increased compensation of a mounted officer, unless mounted at his own expense. Hence, he is not mounted, within the meaning of the law, if furnished with a public horse.—*June* 17, 1881, Vol. 44, pp. 208–209. (U.)

795. The cotemporaneous construction given to the act of July 17, 1862, (12 Stat., 594,) was that an officer was not assigned to duty which required him to be mounted, unless his duties were such as to require him to be "constantly mounted, in camp and on the field of battle." Temporary employment on staff or special duty which might never actually require the use of a horse, is not such an assignment as is contemplated by the act; officers thus temporarily employed being authorized and directed to procure horses and equipments from the Quartermaster's Department whenever occasion arose requiring them to be furnished therewith. (See General Orders 277, Adjutant General's Office, August 8, 1863, and paragraph 373, "Army Paymaster's Manual" of 1864.) Officers' accounts were made up and paid in accordance with that construction throughout the rebellion, the rule being well settled and everywhere understood, and it is believed that the accounting officers have settled no cases upon principles at variance therewith. The construction appears to be reasonable and in harmony with the spirit and intent of the law.—*June* 20, 1881, Vol. 44, pp. 217–219. (U.)

f.—Longevity pay.

See, also, Construction of Statutes, 310, 313.

796. The per cent. allowed by the appropriation act of July 15, 1870, (16 Stat., 315,) to officers of the Army for each period of five years' service, is part of the officer's pay, and not an allowance.—*August* 20, 1870, Vol. 33, pp. 233–234. (B.)

797. In computing their longevity pay and rations, officers of the Army are entitled to be credited with the time they actually served as commissioned offi-

cers, whether as regulars or volunteers.*—*May* 17, 1871, Vol. 33, pp. 645–646 (B.); *January* 18, 1882, Vol. 45, p. 124. (U.)

798. In computing their service for longevity pay, officers of the Army are entitled to be credited with the time served by them as volunteer officers in the Mexican war only to determine the rate of pay accruing to them *from and after the date of the approval of the United States Revised Statutes.* Section 7 of the act of June 18, 1878, (20 Stat., 150,) did not deprive them of this right.—*October* 7, 1878, Vol. 40, pp. 553–558. (U.)

799. Service as a cadet of the Military Academy is not service "as an enlisted man," within the meaning of section 7 of the act of June 18, 1878, (20 Stat., 150,) and no credit can be given under that section for service in the capacity of a cadet in computing an officer's service for longevity pay.†—*September* 6, 1878, Vol. 40, p. 463; *October* 16, 1879, Vol. 42, pp. 69–70 (U.); 16 Opin., 611; G. O. No. 65, A. G. O. of 1878.

800. In computing an officer's longevity pay, his period of service should be reckoned from the date of his acceptance of office and not from the date of his appointment thereto.—*November* 28, 1879, Vol. 42, pp. 140–143; *April* 14, 1883, Vol. 47, pp. 190–197. (U.)

801. Longevity pay depends on *length of service* and not on lineal rank.—*June* 24, 1880, Vol. 43, p. 23. (U.)

802. The increased pay granted for length of service is not an allowance, but pay.—*July* 13, 1882, Vol. 46, pp. 49–50 (U.); U. S. *v.* Tyler, 15 Otto, 244.

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*Modifying section 1876 of the Digest of 1869.

†Under the act of February 24, 1881, (21 Stat., 346,) see case of Morton *v.* U. S., Supreme Court, October term, 1884.

803. The forty per centum referred to in section 1263, Rev. Stat., is understood to be forty per centum on the pay of the rank or designation as stated in section 1261, Rev. Stat.—*April* 21, 1882, Vol. 45, p. 499. (U.)

804. The extra pay to which an officer is entitled while serving as an acting assistant commissary of subsistence cannot be held to be a part of the "current yearly pay" (section 1262, Rev. Stat.,) of the officer as the same is defined by the United States Supreme Court in the Tyler case, (15 Otto, 244,) and therefore cannot be regarded in computing his longevity increase.—*June* 8, 1882, Vol. 45, pp. 607–609. The same rule applies in computing the longevity increase of aids to major-generals and aids to brigadier-generals.—*June* 14, 1882, Vol. 45, p. 628. (U.)

805. In settling claims for arrears of longevity pay, officers will be credited with the time passed in service, and no more. Where an officer has drawn longevity allowances upon the theory that he was entitled to compute his time from the date of his commission, and it appears that he did not become an officer, *i. e.*, did not *accept* his commission, until a later date, the aggregate of the resulting overpayments will be deducted from the amount which would otherwise be due. All other discovered errors will be corrected.—*April* 21, 1882, Vol. 45, p. 499; *April* 14, 1883, Vol. 47, pp. 190–197; *December* 18, 1883, Vol. 48, pp. 211–215. (U.)

806. It is not the practice to revise the accounts of officers who entered the service prior to July 28, 1876, merely for the purpose of discovering and correcting errors due to the fact that in computing their service for longevity pay they have taken credit for time

intervening between appointment and acceptance. When, however, through the action of Congress or otherwise, officers become entitled to credit for time for which credit has not been already allowed, the entire record is examined in each case and the increase of pay due to the additional credit is allowed from the date on which the officer became legally entitled thereto, and not from any earlier date. Under the act of June 18, 1878, (20 Stat., 150,) many officers who had previously taken credit from date of commission instead of date of acceptance, became entitled to, and demanded credit for time they had served as enlisted men. In readjusting these cases, the time actually served by the applicant as an enlisted man is added to the time actually served by him as an officer, and no credit is allowed save for time he was actually in service.—*May* 6, 1882, Vol. 45, pp. 508–510; *April* 14, 1883, Vol. 47, pp. 190–197. (U.)

807. It is a well-settled rule that when an officer asks a re-examination of his account, and his request can properly be acted upon, it opens the whole subject for resettlement. (102 United States, 426.) Many officers have filed claims for arrears of longevity allowances under the decision of the Supreme Court in the case of United States *v.* Tyler, (105 United States, 244.) Each of these claims is a demand for payment of the difference between the amount to which the officer has become entitled under the longevity laws and the amount he has already received thereunder; and no officer has a right to recover, and the accounting officers have no authority to allow, any sum greater than such difference. Each case requires an examination, more or less minute according to circumstances, of the officer's payments

for a series of years. All errors in longevity payments are necessarily corrected. Other errors, incidentally discovered, are corrected at the same time. Of the course thus pursued, the claimant has no just cause to complain. Declining to remain satisfied with what he has received, he demands more. He insists that his account be reopened, that his vouchers be reexamined, that the amount to which he remains entitled be allowed and paid. That amount it is the duty of the accounting officers to allow; they cannot lawfully allow any greater amount.—*April* 14, 1883, Vol. 47, pp. 190–197. (U.)

808. An officer was reappointed a first lieutenant, March 3, 1881, under special act of Congress, the act providing "that no pay or allowances on account of previous rank or services be allowed or paid to the appointee." But the Army appropriation acts of February 24, 1881, (21 Stat., 346,) and June 30, 1882, (22 Stat., 118,) each contained the provision that "the actual time of service in the Army or Navy or both shall be allowed all officers in computing their pay": *Held*, that this provision placed the officer on an even footing with other officers and that he was entitled to be credited with the full time served by him as a commissioned officer and as an enlisted man in computing his service for longevity pay for time subsequent to June 29, 1882.—Vol. 48, pp. 417–418, *February* 21, 1884. (U.)

809. An officer of the Regular Army who left the service prior to June 18, 1878, cannot be given credit for any part of the time served by him as an enlisted man, in computing his service for longevity pay. (See section 7 of Army appropriation act, 20 Stat., 150.)—*April* 1, 1884, Vol. 48, p. 545. (U.)

g.—While prisoner of war.

810. An officer of the rank of second lieutenant was a prisoner of war in the hands of the enemy when commissioned first lieutenant and captain, respectively, and consequently could not be mustered on his commissions. He was discharged November 15, 1865, and paid as second lieutenant. He claimed difference of pay from November 12, 1864, to December 15, 1865: *Held*, that he was entitled thereto, provided there were vacancies in the company to which he belonged, into which, under the regulations of the War Department, he could have been mustered if he had been present.—*March* 10, 1871, Vol. 33, pp. 552–553. (B.)

h.—Court-martial—civil arrest.

811. A deserter, whether officer or enlisted man, who has been arrested and, by sentence of court-martial dismissed the service, is entitled to pay for the period between the date of arrest and the date at which the sentence went into operation, unless payment is prohibited by the language of the sentence.*—*January* 11, 1879, Vol. 41, pp. 47–50 (U.); 13 Opin., 104.

812. Conviction of crime by civil authority does not of itself and in the absence of any law or regulation requiring it, work a forfeiture of the pay, or of any allowance that is subject to the rules which govern pay, due to an officer or soldier at the time of his arrest or withdrawal from duty.† (See secs. 1130 and

* This decision overrules that of January 29, 1866, section 1128 of Digest of 1869.

† Overruling the following decisions of this office, to wit, of February 16, 1853, vol. 16, pp. 59–60; June 23, 1855, vol. 18, p. 350; February 25, 1857, vol. 20, pp. 137–138; October 19, 1864, vol. 27, pp. 135–136; May 18, 1866, vol. 29, p. 162; being sections 620, 1129 and 1312 of Digest of 1869; and modifying section 1304 of said Digest.

1314 of Digest of 1869.)—*March* 15, 1879, Vol. 41, pp. 230–237 (U.); 13 Opin., 104; 15 Opin., 175.

i.—Upon retirement.

See, also, Construction of Statutes, 313; Officers' Pay (*a*,) 757.

813. A retired officer is entitled to pay as an officer on the active list down to the date at which he receives notice of his retirement, unless receipt of such notice is prevented by his own act of default. There is no law under which such pay can be allowed to any later date than that of the receipt of the notice, nor can the officer, after retirement, receive any higher rate of pay than that fixed by section 1274, Rev. Stat.—*August* 7 and 19, 1879, Vol. 41, pp. 658–659. (U.)

814. It was formerly the uniform custom of the accounting officers of the Treasury, where retired Army officers had been on active duty after their retirement, to give them credit, in computing their graduated pay, for all time so passed on active duty. When such officers were relieved from such active duty, it was not the custom of the accounting officers to refuse to allow them any credit for such time so passed on active duty while on the retired list, but it was the custom to give them credit, in computing their graduated pay, for all time so passed on active duty. Prior to the act of March 2, 1867, (14 Stat., 423, sec. 9,) it was the practice of the accounting officers to allow credit for all time passed on active duty, whether on the active or the retired list, and to allow credit for time so passed on active duty only. From the date of that act to July, 1870, it was the practice to allow credit for all time passed in service, whether on the active or the retired list and whether on active duty

or not. Under the act of July 15, 1870, it was, until recently, the practice to allow no credit for time after the act to officers retired before the act, and to allow no credit for time subsequent to retirement to officers retired after the act. This practice was overturned by the decision of the Supreme Court in the case of United States *v.* Tyler, (15 Otto, 224.) It is now the practice to allow credit for all time passed in service, whether since or before July 15, 1870, whether on the active or the retired list, and whether on active duty or not.—*December* 15, 1882, Vol. 46, pp. 515–516. (U.)

k.—During leave of absence.

SEE, ALSO, FUEL AND QUARTERS, 512, 520, 525, 528, 535–539.

815. Contract surgeons are not entitled to pay when absent on leave, whether the absence is on account of sickness or otherwise.—*August* 2, 1869, Vol. 32, p. 386. (B.)

816. The Army appropriation act of July 15, 1870, (16 Stat., 315,) does not change prior laws relating to half-pay of officers of the Army while on leave of absence.—*August* 2, 1870, Vol. 33, pp. 219–220. (B.)

817. Under the acts of August 3, 1861, (12 Stat., 290, sec. 20,) and March 3, 1863, (12 Stat., 736, sec. 31,) an officer absent on leave not exceeding six months, on account of wounds or sickness, was entitled to pay and all allowances, including commutation of fuel and quarters.—*January* 28, 1871, Vol. 33, pp. 470–471. (B.)

818. A veterinary surgeon is entitled to full pay while on leave, unless the leave be granted on conditions as to pay.—*May* 25, 1880, Vol. 42, p. 652. (U.)

l.—Allowance for servant.

SEE, ALSO, OFFICERS' PAY, (*a*,) 743.

819. In settling accounts of deceased officers, allowances for servants will be excluded in the absence of proof of employment; except when a claim for less than one month's pay is made on behalf of the heir or heirs of the deceased and the last payment shows that the officer named his servant, not a soldier.—*November* 8, 1877, Vol. 39, pp. 445–447. (U.)

820. Allowances for pay, clothing and subsistence of a servant of an Army officer can be paid only upon proof that the officer employed a servant who was not an enlisted man.* —*June* 30, 1883, Vol. 47, pp. 423–424. (U.)

m.—Travel pay.†

SEE, ALSO, FURLOUGH, 548; OFFICERS' PAY, (*d*,) 792.

821. Section 15 of the act of January 29, 1813, (2 Stat., 796,) provides "that whenever any officer or soldier shall be discharged from the service, except by way of punishment for an offense, he shall be allowed his pay and rations, or an equivalent in money, for such term of time as shall be sufficient for him to travel from the place of discharge to the place of his residence, computing at the rate of twenty miles a day." In the case of Lieut. J. W. Price, it was decided by the Court of Claims, *pro forma*, that a volunteer officer who resigns before the expiration of his term of enlistment is entitled to the allowances provided by this act. (4 Court of Claims Reports, 164.) The case was appealed to the United States Supreme Court, where the judgment of the court be-

* This decision has reference to the law as it stood prior to July 15, 1870, (16 Stat., 429.) By that act, all allowances for servants were abolished.

†For a summary of the decisions of the office on the question of travel pay and allowances, see Vol. 40, pp. 43–54, March 12, 1878. (U.)

low was affirmed by an equally divided bench: *Held*, that the decision applies only to the case in which it was pronounced. The claims of other officers whose resignations have been accepted are, therefore, still rejected, the War Department and the accounting officers holding that the discharge contemplated by the act of 1813 must be an involuntary one, and not one granted as a favor or for the personal accommodation of the officer.—*February* 6, 1871, Vol. 33, p. 481, (B); *January* 24, 1878, Vol. 39, p. 601; *March* 21 and *April* 6 and 28, 1882, Vol. 45, pp. 354, 410–413, 484; *January* 28, 1884, Vol. 48, p. 322; *February* 9, 1884, Vol. 48, pp. 381–382. (U.)

822. Officers absent from their regiments on account of wounds, who were notified to furnish to the Adjutant-General, as a preliminary to their honorable discharge, a surgeon's certificate of disability, along with their resignations, did not lose their right to travel pay upon being discharged.—*July* 20, 1871, Vol. 34, p. 104. (B.)

823. Where the record evidence is such as to rebut any presumption that an officer who has resigned left the service for his own pleasure or convenience, and makes it clear that a wound or disability, contracted in the service and in the line of duty, was the sole occasion for his resignation and discharge, such officer is entitled to the same allowance for travel pay and subsistence to his home (to wit, to the place where he entered the service) that he would have been entitled to receive had he been discharged for the disability without the intervention of his letter of resignation.—*September* 30, 1878, Vol. 40, pp. 529–531; *November* 18, 1879, Vol. 42, pp. 119–122. (U.)

824. The place where an officer enters the service is, in contemplation of law, the place of residence to

which he is entitled to be returned when honorably discharged.—*May* 22, 1882, Vol. 45, p. 566. (U.)

825. Where a regiment, though formally mustered out at Washington, D. C., was not there disbanded, but was transported thence, at Government expense, to Davenport, Iowa, where final payment was made and final discharge papers delivered to the members (they receiving pay for the interval between muster-out and payment, with travelling allowances from Davenport to their homes:) *Held*, that an officer of the regiment who, at date of muster-out and at date of final payment of the regiment, was at his home at Columbus City, Iowa, whither he had previously gone on leave of absence, at his own expense, was not entitled to travelling allowances from Washington to Davenport.—*November* 13, 1878, Vol. 40, pp. 625–626. (U.)

826. A furlough leave, granted after the date of an officer's discharge and in ignorance thereof, neither restored him to the service nor prejudiced his claim for travelling allowances.—*February* 23, 1881, Vol. 43, p. 593. (U.)

827. An officer discharged at his own request is not entitled to travelling allowances unless his resignation and discharge were in consequence of wounds or disability incurred in the line of duty.—*April* 9, 1884, Vol. 48, pp. 584–585. (U.)

*n.—Per diem.**

828. Per diem to an officer detailed to attend on court-martial, court of inquiry, &c., cannot be al-

* The decisions under this head have reference to the law as it existed prior to the allowance of mileage by the appropriation act of July 24, 1876, (19 Stat., 97.) Since that date officers have not been entitled to any per diem.

lowed in cases where the place at which the court is held is but a short distance from the officer's station.

(*a.*) As, for instance, where the officer, residing at Georgetown, was on duty in the War Department and the court was sitting at the Washington arsenal.—*October* 22, 1864, Vol. 27, p. 143. (B.)

(*b.*) Or where the officer was stationed at Leavenworth City, Kans., and the court was held at Fort Leavenworth, three miles distant.—*May* 13, 1870, Vol. 33, pp. 127–128. (B.)

(*c.*) Or where the officer was on duty at Governor's Island, in New York Harbor, and the board was convened in New York City.—*August* 23, 1875, Vol. 37, p. 72. (B.)

829. An officer detailed on a general court-martial, not held at his station, is entitled to a per diem, unless he receives commutation of fuel and quarters at the place where the court is held.—*July* 6, 1870, Vol. 33, p. 194. (B.)

830. Per diem was refused to an officer who served as recorder of a board detailed for the examination of officers for appointment in the United States Army, under the act of July 28, 1866, (14 Stat., 336.)—*August* 23, 1875, Vol. 37, pp. 70–72. (B.)

B.—Soldiers' Pay.

a.—Generally.

See, also, Bounty, 224; Deserters, 414, 416, 421; Evidence, 467; Officers' Pay, (*a*,) 748; Pardon, 736; Post Traders, 1021–1024; Time, 1146.

831. A soldier arrested by the civil authorities on a criminal charge is entitled to his pay for the time he was in custody, if tried and acquitted, or discharged without trial. (See section 1311 of Digest

of 1869; G. O. No. 21, A. G. O. of 1853, and Circular No. 4, A. G. O., series of 1864.)—*March* 18, 1879, Vol. 41, p. 241. (U.)

832. The reduction to the ranks of a non-commissioned officer, without trial by court-martial and without request of his company commander, is illegal and unauthorized. (Army Regulations of 1863, paragraph 79.) A soldier thus reduced is entitled to pay as a non-commisssioned officer for and during the period of his reduction, even though another may have served as such non-commissioned officer during that period and drawn the pay.—*February* 14, 1882, Vol. 45, p. 229. (U.)

833. A soldier may be detained in service after the expiration of the term for which he enlisted, in order that he may be brought to trial for an offense committed prior to such expiration; and one so detained, whether he be convicted or acquitted, or discharged without trial, continues to be a soldier and (subject to all proper stoppages) entitled to the pay and allowances of a soldier until the case is ended and he is notified, or chargeable with notice, of that fact. And one who has been so detained, but afterwards released from custody, is held to have been discharged by operation of law when so notified or chargeable with notice, although a formal discharge in writing was not delivered to him until a later date or none was delivered at all; the general rule being that the right to pay and allowances ends when notice is received at the post at which it was the duty of the soldier to be.—*August* 10, 1880, Vol. 43, p. 135; *May* 23, 1881, Vol. 44, pp. 133–135; *February* 11, 1882, Vol. 45, pp. 222–225; *May* 24, 1882, Vol. 45, p. 574. (U.)

834. There is no law which would justify the accounting officers in allowing to a hospital steward who has performed the duties but has never held the office of an assistant surgeon, anything in addition to his lawful pay and allowances as a hospital steward. (See section 1765, Rev. Stat.)—*March* 17, 1884, Vol. 48, pp. 505–506. (U.)

835. A soldier was mustered into service October 8, 1861, to serve three years. He received a furlough from his lieutenant-colonel January 27, 1862, "to go home and there remain, unmolested by any U. S. soldiers, nor be compelled to service, he having received a discharge," which furlough was indorsed by the general commanding his brigade, as follows: "This man was sent home to wait his discharge. Have him examined and discharged." On March 19, 1864, he was admitted to general hospital, Madison, Ind., and was discharged April 28, 1864, for disability. He drew no pay for the period from February 26, 1862, to March 1, 1864, but was twice paid for the period from March 19 to April 28, 1864. He drew one hundred dollars bounty under the act of July 22, 1861, but none under the act of July 28, 1866: *Held*, that the charge of desertion once standing against him having been removed, he was not subject to any forfeiture under paragraph 1358 of Army Regulations of 1863, and that, although the authority for his absence may not have been properly exercised, he, not being in fault, was not in the status of absence without leave, and hence was not disqualified by paragraph 1357, Army Regulations of 1863, from receiving pay and allowances for the period of his absence, and therefore was entitled to payment of any balance due on account of pay and clothing and

to fifty dollars bounty under the act of July 28, 1866, (14 Stat., 310.)—*April* 1, 1884, Vol. 48, pp. 547–549. (U.)

b.—Re-enlistment pay—retained pay.

836. Where the sentence of a court-martial, in the case of a soldier convicted of desertion, was that he "forfeit all pay and allowances that are and may become due up to the promulgation of this sentence": *Held*, that the sentence swept away all previously accrued retained pay, notwithstanding the soldier subsequently served out his full term of enlistment.—*December* 15, 1870, Vol. 33, pp. 391–392. (B.)

837. It appearing that a private in the Signal Service asked, in his application for re-enlistment, that the restrictions attending his discharge by special order be removed: *Held*, that the act of re-enlisting him under said application and upon the tacit recommendation of the Chief Signal Officer, operated as a removal of the stigma of dishonor attaching to his discharge, and that his service should therefore be counted as continuous and as coming within the provisions of section 1284, Rev. Stat.—*July* 14, 1877, Vol. 39, p. 214. (C.)

838. In determining extra pay for continuous service under section 1284, Rev. Stat., a soldier can be permitted to count only one enlistment of five years prior to August 4, 1854.—*February* 10, 1876, Vol. 37, pp. 430–431. (C.)

839. A soldier enlisted April 19, 1866, for three years, deserted July 11, 1867, surrendered November 25, 1873, under General Orders No. 102, Adjutant-General's Office, of 1873, was discharged September 3, 1875, by reason of expiration of term of service,

re-enlisted September 23, 1875, for five years, and is still in service May 6, 1878: *Held*, to be not entitled to retained pay for any part of the first two years of his re-enlistment, but to be entitled, upon completion of five years of service, including first enlistment, to re-enlistment pay, under section 1282, Rev. Stat., and to the increase of two dollars per month, under section 1284.—*May* 6, 1878, Vol. 40, pp. 176–177. (U.)

840. Every soldier honorably discharged for any cause is entitled to the benefits of sections 1282–1284, Rev. Stat., allowing increased pay for continuous service, if all other conditions of the law be complied with.*—*June* 28, 1879, Vol. 41, pp. 531–532; *September* 10, 1879, Vol. 42, pp. 2–3; *May* 2, 1881, Vol. 44, p. 53. (U.)

c.—Extra pay.

SEE, ALSO, BOUNTY, 194, 199.

841. By virtue of section 2 of the act of March 2, 1867, (14 Stat., 435,) and section 2 of the act of August 4, 1854, (10 Stat., 575,) soldiers who were discharged from volunteer organizations to enlist in the Regular Army became entitled to two dollars per month extra pay, after a service of five consecutive years in either or both branches of the service.—*June* 25, 1869, Vol. 32, pp. 318–319. (B.)

842. Under section 2 of the act of August 4, 1854, (10 Stat., 575,) it is not requisite that the service shall have been continuous to entitle the soldier to the increased pay provided by the act.—*December* 22, 1873, Vol. 36, p. 158. (B.)

843. Such of the enlisted force as were enlisted expressly for duty as clerks and messengers and were

* Overruling decision of July 29, 1865, in case of John Lonegan, Vol. 28, p. 187.

wholly discharged from service by reason of the reduction made necessary by the sundry civil act of March 3, 1875, (18 Stat., 401,) are entitled to the one month's pay provided for by section 7 of said act.—*June* 19, 1875, Vol. 36, pp. 663–664. (B)

844. A non-enlisted man employed as a teamster in the Mexican war is not entitled to the three months' extra pay provided for by the act of February 19, 1879, (20 Stat., 316.) The fact that such a claimant has received a land warrant does not aid his claim.—*August* 9, 1879, Vol. 41, pp. 621–622. (U.)

845. The three months' extra pay provided for by the act of July 19, 1848, (9 Stat., 248,) is to be graduated by the rank held by the soldier at the date of his discharge.—*August* 22, 1879, Vol. 41, p. 665. (U.)

846. Recruits in the Mexican war who did not leave the United States or did not join their respective companies, and volunteers who, though mustered into service, were not marched or sent to the seat of war or to positions where service was required of them, are not entitled to the extra pay allowed by the act of July 19, 1848, (9 Stat., 248, section 5.) See Regulations of the War Department, August 3, 1848; resolution of July 29, 1848, (9 Stat., 339;) resolution of July 29, 1850, (9 Stat., 562;) act of February 19, 1879, (20 Stat., 316;) 9 Opin., 186; section 1336 of Digest of 1869.—*March* 4, 1880, Vol. 42, pp. 424–426. (U.)

d.—Extra-duty pay.

847. Extra-duty pay to employees at the Alleghany arsenal, for services as auctioneers in selling condemned stores, held to be illegal as being in conflict with the acts of March 3, 1839, and August 23, 1842, (5 Stat., 349, 510.)—*February* 2, 1869, Vol. 32, pp. 60–61. (B.)

848. It is the prerogative of the War Department to determine who were employed as clerks by detail under the act of July 13, 1866, (14 Stat., 93,) and the sanction of the head of a military bureau to their employment has been accepted as that of the Secretary of War in the absence of any general or special order to the contrary.—*October* 4, 1869, Vol. 32, p. 463. (B.)

849. Under section 7 of the appropriation act of July 15, 1866, (14 Stat., 93,) soldiers detailed by proper authority for service, clerical in its nature but not in the line of their duty and not at points enumerated in General Orders No. 79, Adjutant-General's Office, of 1866, should be rated and paid as laborers.—*August* 8, 1870, Vol. 33, pp. 223–224. (B.)

850. When a soldier is employed as a clerk under such circumstances as entitle him to extra pay for constant labor of not less than ten days' duration, he should be paid as a skilled man or artificer at the rate of thirty-five cents a day.—*November* 26, 1870, Vol. 33, p. 354. (B.)

851. Enlisted men doing duty as mail-carriers are not exempt from the restrictions of section 35 of the act of March 3, 1863, relative to details for special service, (12 Stat., 736,) nor has mail-carrying been regarded as extra duty in the sense of entitling to extra-duty pay.—*December* 5, 1870, Vol. 33, p. 369. (B.)

852. While the accounting officers have always deferred to the judgment of the War Department as to the kind of extra duty of detailed soldiers which carries with it a right to extra pay, under the acts of March 2, 1819, (3 Stat., 488,) and August 4, 1854, (10 Stat., 576,) yet when the War Department has

recognized the service of an enlisted man as "extra" and as entitling him to extra pay, the accounting officers have allowed it even though the soldier had not been mustered for it, as the muster was a precaution merely and the sanction of the War Department cured the informality.—*December* 14, 1870, Vol. 33, p. 386. (B.)

853. There is no more ground for refusing extra-duty pay to hospital stewards than there is for refusing it to other enlisted men performing the same extra labor.—*December* 14, 1870, Vol. 33, p. 386. (B.)

854. Clerical services performed by hospital stewards under proper authority "at the several geographical division and department headquarters" are to be regarded as extra duty.—*December* 4, 1871, Vol. 34, p. 251. (B.)

855. A soldier detailed as assistant to a post commissary is not entitled to extra-duty pay under the act of July 13, 1866, (14 Stat., 93, section 7.)—*March* 5, 1874, Vol. 35, p. 649. (B.)

856. By the act of February 1, 1873, (17 Stat., 422,) enlisted men of the engineers are placed on the same footing in regard to extra-duty service as other enlisted men of the Army.—*July* 7, 1874, Vol. 36, p. 126. (B.)

857. Enlisted men of the Army employed in the capacity of regimental teamsters are not entitled to extra-duty pay.—*August* 8 and *December* 27, 1877, Vol. 39, pp. 284–285, 557. (U.)

858. An enlisted man while serving as a military telegraph operator in 1864–'65, occupied no other status than that of one detailed to special service and was entitled to receive the pay and emoluments of an enlisted man and no more. And where by special or-

der, dated November 19, 1864, an enlisted man was "furloughed without pay or emoluments until further orders," and ordered to report for duty as a telegraph operator: *Held*, that such order was not a furlough, but a detail, and that the soldier was entitled to pay, &c., as an enlisted man for the whole period during which he was so detailed and up to the time of his actual discharge.—*September* 14, 1877, Vol. 39, pp. 367–369. (C.)

859. Under section 1287, Rev. Stat., the payment of thirty-five cents per day is not limited to persons who are overseers of artificers. The words "such work" refer to the military works, public roads, and other constant labor therein mentioned. A non-commissioned officer lawfully employed as overseer of privates engaged as laborers in "such work" is entitled to extra pay at the rate of thirty-five cents per day.—*August* 6, 1879, Vol. 41, p. 610. (U.)

860. Extra-duty pay will not be allowed to soldiers employed as clerks, except at division or department headquarters.* (See General Orders No. 22, Adjutant-General's Office of 1852; decision of Secretary of War, of May 10, 1852; section 1344 of Digest of 1869.)—*May* 3, 1877, Vol. 39, p. 41. (C.)

861. A private soldier or a non-commissioned officer detailed to carry out the provisions of section 1231, Rev. Stat., relative to schools at military posts, is entitled to thirty-five cents per day, extra pay.—*March* 14, 1881, Vol. 43, pp. 628–629. (U.)

862. The allowance of extra-duty pay to enlisted men of the Army, detailed and employed as clerks

* By the Army appropriation act of July 5, 1884, (23 Stat., 109–10,) "clerks for post quartermasters at military posts" are included in the exception.

and messengers at division and department headquarters, was first authorized by the Army appropriation act of August 5, 1854, (10 Stat., 577,) under the head of incidental expenses of the Quartermaster's Department, and has since been warranted, from year to year, (excepting the fiscal year ending June 30, 1884,) by the insertion, in the several Army appropriation acts, of the clause "including those employed at division and department headquarters." Such allowance is not founded upon any law creating the service, but is the creature, solely, of an express appropriation; hence, when Congress fails to appropriate specifically for this service, no allowance of extra-duty pay to enlisted men so employed can lawfully be made.—*August* 31, 1883, Vol. 47, pp. 638–640. (U.)

e.—Travel pay.

863. In the settlement of travelling allowances, the place of enlistment, whether of the first or any subsequent enlistment, is to be regarded as the "residence" of the discharged soldier.—*March* 18, 1870, Vol. 33, pp. 59–61. (B.)

864. Soldiers discharged at their own request are not entitled to receive travel pay and rations from the place of discharge to the place of enlistment, except after twenty years' faithful service.* (See paragraph 163, Army Regulations of 1863.)—*August* 8, 1873, Vol. 35, p. 427. (B.)

865. Under section 7 of the Army appropriation act of March 2, 1867, (14 Stat., 487,) California and Nevada volunteers are entitled to their expenses for travel actually performed to their respective places of

* Modifying section 2189 of the Digest of 1869.

enlistment, even when discharged outside of New Mexico, Arizona, or Utah. The words "and at points distant from the place or places of enlistment" are not controlled in their signification by the previous limitation.—*December* 19, 1872, Vol. 35, p. 105. (B.)

866. Extra travel pay to California and Nevada volunteers, under section 7 of the act of March 2, 1867, (14 Stat., 487,) is restricted to those who had at that time performed the journey. Hence, where the facts presented indicate that the claimant had resided in the territory where his discharge took place, or at the east, until a date subsequent to March 2, 1867, no allowance of additional travel pay should be made under the act.—*July* 24, 1874, Vol. 36, pp. 156–157. (B.)

867. Nor should an allowance, under said act, be made where the distance travelled is less than three hundred miles.—*May* 29, 1873, Vol. 35, p. 339; *July* 24, 1874, Vol. 36, p. 157. (B.)

868. It was not the intent of the act of March 2, 1867, (14 Stat., 487,) to pay the increased travel pay thereby provided for, to California or Nevada troops who were discharged at a point where transportation could be furnished and whence the cost, by the usually travelled route, was not exhorbitant.—*January* 11, 1875, Vol. 36, p. 400. (B.)

869. Enlisted men who, after serving some time, "are found to be utterly worthless on account of drunkenness or some other trait of bad character which discipline fails to cure, and who are consequently discharged by order from the War Department for the interests of the service, before expiration of the term for which they enlisted," are not discharged "by way of punishment for an offense," within the meaning of

section 1290, Rev. Stat., nor by way of favor, and are therefore entitled to travel pay.—*April* 21, 1881, Vol. 44, pp. 26–27. (U.)

870. Travelling allowances can be paid to soldiers discharged within the period from June 22, 1874, to February 26, 1877, inclusive, upon honorable discharges only.—*December* 5, 1882, Vol. 46, pp. 487–488. (U.)

871. Section 10 of the act of March 3, 1863, (12 Stat., 744,) in relation to under cooks of African descent, restricts their full compensation to ten dollars per month and one ration per day. The words of the law thus forbid the Pay Department from including travel pay to these men when discharged, as in the case of other enlisted men. (See paragraph 2171 of Digest of 1869, and 11 Opin., 193.)—*July* 25, 1877, Vol. 39, pp. 240–242. (C.)

872. Soldiers discharged at Washington, D. C., under General Orders No. 37, of 1880, to enable them to enter the Soldiers' Home, are entitled to travel allowances from that city to the place of their enlistment.—*April* 6, 1882, Vol. 45, pp. 410–413; *May* 24, 1882, Vol. 45, pp. 576–577. (U.)

f.—Expiration of service; discharge, muster out.

873. The fact that a soldier was not mustered out at the expiration of his term of service, for the reason that he was wounded and unable to travel, but was, from motives of humanity, retained in hospital, gives him no right to pay to a later date.—*December* 8, 1877, Vol. 39, p. 510; *July* 23, 1883, Vol. 47, pp. 472–473 (U.); Sec. 1301, Digest of 1869.

874. Where, in order to make available an appropriation for the fiscal year ending June 30, 1877, for

the payment of certain allowances to certain soldiers who had actually served until July 18, 1877, and who were in fact discharged at that date, the discharge papers of the soldiers were antedated and the record made up as if they had been discharged on July 1, 1877, and payment was made to June 30, 1877: *Held*, that upon due proof of performance of duty down to the date of actual discharge, payment might be made to that date, notwithstanding the condition of the military record.—*May* 25, 1878, Vol. 40, pp. 216–217. (U.)

875. Where a soldier's discharge papers are dated on the day following the expiration of his term of enlistment, and it is not expressed that his discharge is to take effect from another date, he is entitled to pay for the day of discharge.—*February* 14, 1879, Vol. 41, p. 133. (U.)

876. In the cases of enlisted men, the certificate of discharge is so generally delivered on the day of its date that the question whether pay shall be allowed to a later date is very seldom presented. It is the understanding of this office, however, that an enlisted man, like an officer, when discharged on surgeon's certificate, is, as a rule, entitled to pay to the date of receipt by him of notice of his discharge. In such cases pay is ordinarily allowed to the date of receipt of the order or certificate of discharge at the post or station at which the party discharged is serving, and not to any later date. This, upon the presumption that the same is properly delivered on the day it is so received; which presumption may be rebutted by proof that delivery was delayed to a later date, without fault on the part of the party discharged.—*April* 6, 1882, Vol. 45, pp. 410–411; *May* 24, 1882, *Ibid.*, pp. 576–577. (U.)

g.—During absence.

SEE, ALSO, COURTS-MARTIAL, 373–374.

877. There is no law or regulation which denies pay, allowances, or bounty to soldiers during, or because of their absence in hospital, or absence, however long continued, upon an ordinary furlough duly extended, or absence on a discharge furlough.—*April* 16, 1879, Vol. 41, pp. 326–330. (U.)

878. Where the records of the War Department show that a soldier was furloughed in October, 1862, to await discharge, and was not actually discharged prior to the discharge of his organization in 1864, but a discharge certificate was issued in 1865, to date November 1, 1862: *Held*, that the attempt to antedate the discharge, in contradiction of the facts which the records disclose, cannot be regarded as effectual, and that the soldier is entitled to pay and allowances up to the date of the expiration of his term.—*June* 4, 1884, Vol. 49, pp. 57–58. (U.)

879. A soldier absent without leave is not entitled to any pay or allowance during the period of his absence.—*April* 3, 1879, Vol. 41, p. 283. (U.)

h.—Arrears of pay—heirs.

SEE, ALSO, ATTORNEYS, 84; BOUNTY, 142, 189, 197, 222-223, 228–229; COLORED SOLDIERS, 294; DESERTERS, 411; EXECUTORS AND ADMINISTRATORS, 478; LOYALTY, 675; WIDOWS, 1204.

880. Where a widow of a deceased soldier dies after remarriage, her surviving husband, if the sole heir of his wife, is entitled to receive whatever arrears of pay and whatever balance of original bounty were due the soldier at the date of his decease, but not the additional bounty given by act of July 28, 1866, (14

Stat., 322.) The former are regarded as assets of the wife's estate, to be distributed according to the *lex loci.*—*January* 29, 1869, Vol. 32, pp. 55–56. (B.)

881. Illegitimacy of the soldier is not of itself a bar to the allowance of a claim for arrears of pay, made by the brothers and sisters of the deceased mother of the deceased soldier.—*September* 7, 1880, Vol. 43, p. 207 (U.); 2 Kent, 213.

882. The back pay of a deceased soldier, who died childless, in the State of Texas, and the deposits made by him, held to be payable to his widow, pursuant to the laws of that State.—*October* 7, 1880, Vol. 43, pp. 275–278. (U.)

883. Claim was made by the widow of a soldier of the war of 1812 for arrears of pay alleged to be due the decedent. There was no record evidence of the service: *Held*, that the claim should not be allowed on affidavits unsupported by record evidence.—*December* 19, 1881, Vol. 45, p. 33. (U.)

i.—Forfeiture.

See, also, Courts-Martial, 373–375, 377–379; Pardon, 736.

884. Where a soldier who was sentenced by a general court-martial to one year's imprisonment, with forfeiture of a portion of his monthly pay during the period of imprisonment, was, at the expiration of the year, discharged from the service as of the date of the muster-out of his regiment, (which had meanwhile occurred:) *Held*, that when the pay of the convicted soldier ceased, the forfeiture likewise ceased.—*June* 4, 1869, Vol. 32, p. 288. (B.)

II.—OF THE MARINE CORPS.

SEE, ALSO, DESERTION, 416.

a.—General principles.

885. Marine officers are entitled to the same pay and allowances as officers of the like grade in the infantry.—*April* 8, 1879, Vol. 41, p. 296; *February* 23, 1882, Vol. 45, p. 254. (U.)

886. The payment of premiums for recruits for the Army having been prohibited by circular from the Adjutant-General's Office, of date of February 11, 1868, and the Marine Corps being assimilated to the Army as respects pay and allowances, authority for paying two dollars for each accepted recruit for said corps no longer exists.—*July* 27, 1870, Vol. 33, p. 214. (B.)

887. Under the appropriation act of July 15, 1870, (16 Stat., 320,) an allowance for stationery for the private use of officers of the Marine Corps cannot be sanctioned.—*April* 26, 1871, Vol. 33, pp. 596–597. (B.)

888. W. re-enlisted as a private in the Marine Corps October 29, 1869, and received a special discharge October 15, 1871, upon furnishing a substitute. He again enlisted January 7, 1873: *Held*, that having failed to serve out the term of his first re-enlistment, he lost the benefits of the act of August 4, 1854, (10 Stat., 575,) relating to increase of pay, but that he was entitled under his last enlistment to sixteen dollars per month pursuant to section 3 of the Army pay act of May 15, 1872, (17 Stat., 116.)—*February* 10, 1873, Vol. 35, pp. 162–163. (B.)

889. Any order of the War Department affecting the pay and allowances of the infantry of the Army must have the approval of the Secretary of the Navy before the Marine Corps can be entitled to the benefit thereof.—*February* 15, 1877, Vol. 38, pp. 564–566. (C.)

b.—Longevity pay.

890. P. resigned his position as captain's clerk on November 4, 1861. On November 25, 1861, he was appointed a lieutenant in the Marine Corps. He claimed credit, under section 3 of the act of March 2, 1867, (14 Stat., 516, sections 1412 and 1600, Rev. Stat.,) for the sea service performed by him as captain's clerk; *Held*, that as he was not transferred from the volunteer service direct to the Marine Corps without any interval of time, he was not entitled to the credit claimed.—*May* 24, 1876, Vol. 38, pp. 47–49. (C.)

891. A captain's clerk, U. S. N., is not an "officer" nor an "enlisted man," within the contemplation of section 3 of the act of March 2, 1867, (14 Stat., 516, section 1412, Rev. Stat.,) which provides that "all marine officers shall be credited with the length of time they may have been employed as officers or enlisted men in the volunteer service of the United States."*—*September* 4, 1876, Vol. 38, p. 294. (C.) But see sections 902 and 953, *post.*

892. An officer in the Marine Corps is entitled, under section 1600, Rev. Stat., to be credited, as such officer, with the whole time he may have served as an officer or as an enlisted man in the volunteer service and to receive the longevity pay to which that

* The act of February 28, 1881, (21 Stat., 346,) allows credit for service in the Army or Navy.

credit entitles him.—*May* 19, 1876, Vol. 39, pp. 361–363. (C.) *February* 23, 1882, Vol. 45, p. 254. (U.) And see section 893, following:

893. Section 1600, Rev. Stat., providing that "all marine officers shall be credited with the length of time they may have been employed as officers or enlisted men in the volunteer service of the United States," modifies to some extent the construction previously placed by this office upon section 3 of the act of March 2, 1867, (14 Stat., 516.) Previous to the revision, it was held that only officers or enlisted men in the volunteer service, who were "transferred" to the Marine Corps were entitled to the benefits of said act; but section 1600, Rev. Stat., extends the benefit to the persons therein described, whether they may have been transferred or not Although, however, that section allows a computation of the term of service in accordance with its provisions, such computation does not cover pay that became due before June 22, 1874, the date of the revision. Hence, an officer who enlisted in the Marine Corps and whose second five-years' term of service (counting ten months and ten days served as a lieutenant of volunteers), began on June 11, 1873, is entitled to compute his second term of service from that date. But, since section 1600, Rev. Stat., is not retroactive, his right to this mode of computation does not embrace pay that became due before June 22, 1874.—Case of Major Goodloe, *February* 28, 1882, Vol. 45, pp. 270–271. (U.)

894. Since, by section 1612, Rev. Stat., officers of the Marine Corps are to receive the same pay and allowances "as are or may be provided by or in pursuance of law" for officers of like grade in the infantry

of the Army, a subsequent provision for computing the longevity pay of officers of the Army, like that contained in the appropriation act of February 24, 1881, (21 Stat., 346,) is held to be applicable to officers of the Marine Corps; and in computing their pay for time since the passage of that act, it is proper to count "the actual time of service in the Army or Navy, or both."—*February* 23, 1882, Vol. 45, p. 254. (U.)

c.—Extra duty pay.

895. An enlisted man of the Marine Corps, detailed as a clerk, is entitled to thirty-five cents per day, extra pay, and to commutation of rations, fuel, and quarters, as provided by General Orders No. 92, Adjutant-General's Office, of 1868.—*April* 3, 1873, Vol. 35, p. 240. (B.)

d.—Travel pay.

896. In July, 1874, Lieutenant K., United States Navy, was sent home, sick, from the Mediterranean. Upon his arrival in London, he consulted a physician who ordered him "to remain perfectly quiet, and under no circumstances to attempt further progress." He claimed reimbursement of the expenses incurred by him while detained in London: *Held*, that incapacity to travel because of sickness is not a detention within the meaning of the Regulations, and imposes no pecuniary obligation upon the Government.—*May* 22, 1875, Vol. 36, p. 617. (B.)

897. The transfer of an officer from "waiting orders" to "other duty" does not imply *detention* when the performance of such duty is merely temporary, any more than when it is permanent.—*June* 2, 1875, Vol. 36, pp. 628–629. (B.)

898. An officer of the Marine Corps, being at Norfolk, Va., was ordered, in November, 1878, to League Island, Pa., for trial. On the trial he was found guilty, and several penalties were imposed, among which forfeiture of travel pay was not included: *Held*, that it was not in the discretion of the accounting officers to add to the punishment inflicted by a court-martial by taking from the officer that which was already vested in him as a legal right; that as by the act of August 5, 1864, (section 1612, Rev. Stat.,) officers of the Marine Corps are entitled to the same pay and allowances as officers of like grade in the infantry, and as transportation was not furnished the officer and he did not come within any of the other exceptions mentioned in the act of July 24, 1876, (19 Stat., 100,) he was entitled to travel pay, because travelling "under orders."*—*April* 8, 1879, Vol. 41, pp. 296–297. (U.)

III.—OF THE NAVY.

a.—General principles and cases.

See, also, Paymasters, 968.

899. Claimant, a resident of Arran Island, Ireland, made application for arrears of pay due to his deceased son for services as second assistant engineer on a United States gunboat. Letters of administration having been refused him by the foreign court, on the ground that the deceased had neither domicile nor property in the county: *Held*, that in consideration of the peculiar circumstances of the case, the sum found due to the deceased, on certificate issued to him while living, although over one hundred dollars in

* Overruling section 2082 of Digest of 1869.

amount, might be paid to the father, or his attorney, without the issuance of letters of administration.—*May* 6, 1869, Vol. 32, pp. 220–221. (B.)

900. The duties of surgeon, passed assistant surgeon, and assistant surgeon in the United States Navy being identical in their nature, no claim for higher-grade pay because of higher-grade duty in the Medical Corps could arise, even if the authority to allow it had not been repealed by section 3 of the act of June 17, 1844, (5 Stat., 703.)—*March* 4, 1870, Vol. 33, p. 30. (B.)

901. An officer in the Navy accepted a commission and took the oath of office as a second lieutenant in the Army, February 18, 1873, and received a lieutenant's pay from that date. He also received pay as an officer of the Navy down to February 23, 1873, inclusive: *Held*, that he ceased to be an officer of the Navy upon his acceptance of a commission as an officer of the Army; that the pay received by him as an officer of the Navy after his acceptance of a position in the Army should be charged against him.—*May* 8, 1882, Vol. 45, pp. 510–511; *May* 22, 1882, *Ibid.*, pp. 562–563. (U.)

902. A captain's clerk in the Navy is on the same footing as to pay, and allowances for travel, as a naval officer.*—*July* 18, 1870, Vol. 33, pp. 206–207. (B.)

903. An officer in charge of iron-clads on their passage to New Orleans from Mound City, which vessels were not in commission for sea service, but simply in tow of a steamer, is entitled to "other duty" pay,

* By the Navy appropriation act of May 4, 1878, (20 Stat., 50,) the appointment from civil life of secretaries or clerks to admirals, or vice-admirals, when on sea service, or of clerks to commanders of vessels, is prohibited.

merely—not to sea pay.—*November* 26, 1870, Vol. 33, pp. 353–534. (B.)

904. Chiefs of bureaus in the Navy Department, whose salaries were increased by the act of March 3, 1871, (16 Stat., 526,) became entitled to the increase from that date, notwithstanding the appropriation made by that act did not become available until July 1, 1871.—*March* 22, 1871, Vol. 33, pp. 535–537. (B.)

905. Officers performing the duty of naval storekeepers, not actually attached to any vessel on sea service, are not entitled to sea pay, but merely to shore-duty pay.—*May* 3, 1872, Vol. 34, pp. 451–452. (B.)

906. Prior to the rebellion, A. was a purser in the Navy and was attached to the sloop-of-war Macedonian. He rendered his final account, and claimed pay under the act of August 20, 1842, (5 Stat., 535,) as purser of a frigate at a salary of three thousand dollars per annum, instead of two thousand dollars per annum, allowed by that act to pursers of sloops-of-war. The difference (three thousand seven hundred and eighty-six dollars and eighty-four cents) was disallowed, and on May 6, 1861, a refunding requisition for that sum was issued on a deposit previously made by him to the credit of the United States. At the outbreak of the rebellion, A. went with the South. On February 6, 1867, he was pardoned by the President, and subsequently presented a claim for the said three thousand seven hundred and eighty-six dollars and eighty-four cents, urging, in support of the claim, the opinion of the Attorney-General that the Macedonian was a frigate, (see 8 Opin., 503,) and the decision of the Supreme Court, in United States *v.* Klein, that the President's pardon placed the one in whose

favor it was issued in all respects exactly where he was before the wrongful act was committed, and that it could be given as a proof of loyalty: *Held*, that even if the opinion of the Attorney-General were not assailable, in that it strikes at the authority of the Navy Department to rate its own vessels, the claim could not be paid because forbidden by the joint resolution of March 2, 1867, (14 Stat., 571, section 3480, Rev. Stat.;) that the decision of the Supreme Court, while of binding authority in the case in which it was given, should not be extended by the accounting officers to other cases which might be deemed by them somewhat similar.—*May* 14, 1872, Vol. 34, pp. 482–483. (B.)

907. Before paying to the heirs of an officer entitled thereto the gratuity allowed by the act of July 27, 1854, (10 Stat., 799,) the state of such officer's accounts must be ascertained, and if there has been an overpayment by the United States, such overpayment must, on an allotment of his pay to his family or relations, be deducted.—*May* 6, 1874, Vol. 36, pp. 40–41. (B.)

908. Whenever an officer shall be detached from a vessel, his sea pay must cease from the date of his detachment, and he must go upon "other-duty" or "waiting-orders" pay, as indicated by the detachment orders. If detached from one vessel and ordered to another, both vessels being in commission for sea service, he will not be entitled to sea pay *in transitu*, but only to "other-duty" pay; if granted temporary leave from sea or other duty, on account of sickness, but not detached, his rate of pay, for a period not to exceed three months, will not be changed, but at the expiration of that period he will be considered as de-

tached; if detached and granted sick leave or sent to hospital, his duty pay will cease on detachment and from the date of detachment he will be allowed leave pay only.—*November* 20, 1874, Vol. 36, p. 311. (B.) But see section 925, *post.*

909. Passed assistant surgeons become entitled to the pay and relative rank of that grade from and after the date fixed by the Secretary of the Navy in his certificate approving the action of the Examining Board of Naval Surgeons; and to longevity pay from and after five years from that date.*—*February* 7, 1876, Vol. 37, pp. 432. (C.)

910. Paragraph 28, page 123, of the Navy Regulations of 1876 is not inconsistent with paragraph 62 of the Revised Rules of the Fourth Auditor's Office, and is not to be construed as authorizing an officer to receive his pay up to date of sailing, irrespective of the advance authorized by section 1563, Rev. Stat., if the vessel be detained beyond the period covered by the advance.—*July* 21, 1877, Vol. 39, p. 237. (C.)

911. Where a Retiring Board found that the incapacity of an officer retired by it was not the result of any incident of the service, and its decision was approved by the President by an order in which the latter determined that the retirement was on furlough pay: *Held*, that such decision, thus approved, was conclusive of the question of pay, and that the right of the officer, in that respect, could not afterwards be changed without the action of the President by and with the consent of the Senate, pursuant to section

* Assistant surgeons of three years' service, who have served two years on board public vessels of the United States, are, by Regulations of the Navy Department, entitled to examination for promotion.—See letter from Secretary of the Navy to Second Comptroller, May 5, 1880, Division Memorandum Book, p. 291.

1594, Rev. Stat.; that, as the law has not made it the duty of the Secretary of the Navy to determine the pay of a retired officer, a letter written by him, in which it was stated that "the [Navy] Department is of the opinion that the causes which incapacitated him (the officer) from active duty were incident to the service, and that he should receive the higher rate of pay," in no way affected the rights of the officer.—*January* 30, 1878, Vol. 39, pp. 616–618. (U.)

912. The rate of pay of a retired naval officer is fixed by law and depends upon the decision made at the time he was retired; and neither a decision subsequently made by the Secretary of the Navy that "he (the officer) is to be considered as on the full retired pay list" or a subsequent statement of a succeeding Secretary that "he was retired for causes not incident to the service" is competent evidence as to the officer's status or rate of pay. The proper evidence as to his rate of pay is the approved finding of the Retiring Board.—*July* 1, 1878, Vol. 40, pp. 314, 502–504. (U.)

913. An assistant naval constructor was detached from the navy-yard, Mare Island, California, by an order dated September 30, 1882, but the order did not reach him until October 9, 1882: *Held*, that section 3 of the act of August 5, 1882, (22 Stat., 297,) which provides that after October, 1882, the employment of a naval officer upon shore duty must be required by the public interests and must be so stated in the order of employment, did not have the effect to remove the officer, or change his duties, and that he was properly on duty until the receipt by him of the order.—*February* 10, 1883, Vol. 46, p. 694. (U.)

914. "The pay of the Superintendent of the Naval School at Annapolis shall be at the rate allowed to an officer of his rank when in service at sea." (Act of September 28, 1850, 9 Stat., 515.) This enactment is not repealed by section 5596, Rev. Stat. It is a provision of a local character; and, although a portion of the act is embraced in the revision, yet section 5596 provides "that the incorporation into said revision of a general and permanent provision taken from an act making appropriations, or from an act containing other provisions of a private, local, or temporary character, shall not repeal" any provision of a local character. Nor is the special provision above quoted, allowing sea pay to the Superintendent of the Naval Academy, inconsistent with, or repealed by the act of July 15, 1870, or by the act of June 1, 1860. A special provision like the one in question is not repealed by enactments expressed in such general terms as those employed in the two acts last mentioned.—*May* 24, 1882, Vol. 45, pp. 572–573. (U.)

For the same reasons, an officer serving as commandant at the Mare Island navy-yard, California, must be allowed the sea pay of his rank.—*May* 26, 1882, Vol. 45, pp. 586–587. (U.)

915. A commodore, United States Navy, ordered to Mare Island, California, as member of a Board to examine a monitor, is not prohibited by section 3 of the act of August 5, 1882, (22 Stat., 297,) from drawing "other duty" pay.—*February* 10, 1883, Vol. 46, p. 693. (U.)

916. By an order dated August 15, 1882, to take effect October 6, 1882, a naval officer was detached from the navy-yard, Mare Island, California, and was directed to report for duty in the Bureau of Ord-

nance, at Washington, D. C., on October 14, 1882: *Held*, that the act of August 5, 1882, (22 Stat., 297,) did not have the effect of relieving him from the duty enjoined by said order, and does not deprive him of compensation while in the performance of the duty, and that he should be allowed "other duty" pay while travelling to Washington.—*February* 10, 1883, Vol. 46, p. 696. (U.)

917. On September 6, 1882, an order was issued to a passed assistant engineer, on duty in the Bureau of Steam Engineering, as follows: "SIR: Leave of absence is granted you for three months from the 8th inst., with permission to leave the United States." On September 30, 1882, he was given another order, which detached him from said Bureau, and which contained the statement required by section 3 of the act of August 5, 1882, (22 Stat., 297.) He claimed "other-duty" pay from September 8th to September 30th, 1882: *Held*, that the Navy Department has power to place an officer upon leave, or upon duty, at its discretion, and to put an officer on such duty as will enable him to draw other-duty pay while absent from the United States, but that the above-mentioned orders did not have that effect.—*April* 13, 1883, Vol. 47, pp. 186–187. (U.)

918. A gunner, while attached to the "Brooklyn," of the South Atlantic squadron, was tried by a naval general-court-martial and sentenced "to be suspended from duty for ten months, and to receive, during such suspension, three-fourths of leave-of-absence pay." The admiral commanding the squadron approved the sentence of the court, and to the order approving it he added the following: "You are hereby detached from the U. S. flagship "Brooklyn," and will report

immediately to Commander S. W. Terry, commanding the U. S. steamer Marion, at this place, for passage to the United States. Upon your arrival there, you will report to the Hon. Secretary of the Navy, inclosing a copy of these orders": *Held*, that after the approval of the sentence, there was no power to change its effect by ordering the gunner to duty, and that he was entitled only to three-fourths of leave pay until the expiration of the ten months mentioned in the sentence.—*April* 19, 1883, Vol. 47, pp. 206–207. (U.)

919. On October 6, 1882, the flag officer of the Pacific squadron telegraphed the Secretary of the Navy as follows: "Cadet Craig resigns. Waives transportation. Please accept by telegraph." The Secretary telegraphed an acceptance of the resignation. The cadet returned to the United States, and upon his arrival in Washington received an official communication from the Secretary of the Navy, dated November 15, 1882, informing him that his telegraphed resignation would be accepted, to take effect October 6, 1883, instead of October 6, 1882. It does not appear that the cadet signed a resignation until October 11, 1882: *Held*, that the transaction of October 6, 1882, was not such a presentation and acceptance of a resignation as put it beyond the power of the Secretary of the Navy to take further action in regard to it; that the accounting officers are justified in treating the cadet as still in the service, and that he is accordingly entitled to pay.—*May* 11, 1883, Vol. 47, pp. 227–228. (U.)

920. Where an officer "waiting orders" is ordered on "other duty," it is the practice of the accounting officers to allow him only "leave pay" from the time he reports by letter to the time he leaves his domicile

to enter upon his duties (Navy Regulations of 1878, page 119, paragraph 46.)—*October* 31, 1883, Vol. 48, p. 91. (U.)

b.—Sea pay.

921. Duty on board a vessel at sea, under authority of the Government, alone entitles to sea pay. Therefore the claim of an officer for sea pay while on duty upon a court of inquiry at Rio de Janeiro, in September, 1874, was disallowed.—*February* 11, 1875, Vol. 36, pp. 438–439. (B.)

922. The sea pay of officers ordered to a sea-going vessel commences at the time the vessel goes into commission.—*November* 21, 1878, Vol. 40, pp. 638–639. (U.)

923. When a naval officer is ordered to a vessel in commission for sea service, as a relief of another officer, both officers are entitled to sea pay on the day of detachment.—*October* 11, 1878, Vol. 40, pp. 565–566. (U.)

924. Services performed by order of the Navy Department by a naval officer on board a nautical schoolship, in pursuance of the act of June 20, 1874, (18 Stat., 121,) while such vessel is at sea, are "performed at sea under orders of a Department and in a vessel employed by authority of law," within the meaning of section 1571, Rev. Stat., and they entitle such officer to sea pay.—*April* 26, 1880, Vol. 42, pp. 570–571. (U.)

925. A naval officer presented a claim for sea pay from March 19 to April 7, 1881, while on board the United States steamer Powhatan, under travelling orders from New York to Aspinwall: *Held*, that since the date of the revision of the statutes (June 22, 1874) service of this kind must be regarded as sea service,

and that the claim of the officer should be allowed, although he was not attached to the vessel.—*June* 21, 1882, Vol. 45, pp. 658–659; *February* 17, 1883, Vol. 47, pp. 39–41. (U.)

926. Where a naval officer, by an order dated April 11, 1881, was placed on sea duty, to wit, "in command of all the apprentice ships," and, by a subsequent order, dated October 9, 1882, was, in addition, appointed president of the commission to consider and report upon the subject of selling navy-yards: *Held*, that while in performance of duty under the latter order he was not entitled to sea pay.—*August* 30, 1883, Vol. 47, pp. 633–635. (U.)

c.—Promoted pay.

927. Under section 7 of the act of July 15, 1870, (16 Stat., 333,) which provides that "the increased pay of a promoted officer shall commence from the date he is to take rank as stated in his commission," the date on which a commission of an officer of the Navy is issued is the date at which he is entitled to be recognized as an officer of the grade specified in the commission.—*January* 17, 1871, Vol. 33, p. 454. (B.)

928. An assistant engineer, United States Navy, having performed the necessary sea service and being entitled to an examination for promotion, was nominated for promotion and confirmed by the Senate, and his commission was made out and signed on March 21, 1870, but was not delivered until November following by reason of a delay in his examination, without fault on his part, he being on duty abroad: *Held*, that the delay did not change the date of the commission, and that his case was similar to the cases of cer-

tain midshipmen whose commissions as ensigns were executed in July, 1869, three or four months before their examinations, and transmitted to them after the examinations, and who received pay, on their promotion, from the date of the execution of their commissions.—*January* 17, 1871, Vol. 33, p. 454. (B)

929. Prior to the act of July 15, 1870, every promoted officer in the Navy was entitled to increased pay from the date of his commission or warrant. Since the date of that act, down to June 5, 1872, the increased pay of a promoted officer has commenced to run from the date he takes rank as stated in his commission.—*September* 26, 1871, Vol. 34, p. 174. (B.)

930. An assistant engineer who had become entitled to an examination and had failed on the first trial, obtained an order directing that he be re-examined on August 1, 1868. Having passed that examination, and having been promoted, March 21, 1870, he claimed the higher rate of pay from the date he first became entitled to examination: *Held*, that he was not entitled thereto under the act of July 16, 1862, section 16, (12 Stat., 586;) that the provision in regard to re-examination (section 1562, Rev. Stat.,) had not then been enacted; that his re-examination was not delayed, but was had at the date at which he became entitled thereto, and that the delay occurred in the issuing of his commission, after he had passed the examination.—*October* 31, 1882, Vol. 46, pp. 429–430. (U.)

931. The pay of a retired pay director is not affected by the assimilation of his pay while on duty at sea to that of a fleet paymaster, as provided by section 6 of the act of March 3, 1871, (16 Stat., 536.) A special service of this kind does not constitute a

grade, nor can the provision of law giving assimilated pay be legally extended so as to authorize an allowance that depends on grade.—*October* 25, 1871, Vol. 34, p. 205; *November* 21, 1871, *Ibid.*, pp. 237–238. (B)

932. Under the clause of section 7 of the act of July 15, 1870, (sec. 1556, Rev. Stat.,) providing that "hereafter the increased pay of a promoted officer shall commence from the date he is to take rank as stated in his commission," the date of the commission and the date of his rank as therein stated were two distinct and material dates; but that clause was repealed by the act of June 5, 1872, (17 Stat., 226,) and in its place it was enacted that "if such officer shall have been promoted in course, to fill a vacancy, and shall have been in the performance of the duties of the higher grade from the date he is to take rank, he may be allowed the increased pay from that date." Since that change, the pay of an officer does not depend upon the statement of a date in his commission as distinguished from the actual date of commission See sec. 1561, Rev. Stat., and act of June 22, 1874, (18 Stat., 191.)—*March* 11, 1880, Vol. 42, p. 452. (U.)

933. The term "promoted officer" as used in the act of July 15, 1870, (16 Stat., 333,) refers exclusively to officers promoted from a lower to a higher grade, and cannot properly be construed to apply to an officer simply advanced in numbers in his own grade under the act of January 24, 1865, (13 Stat., 424.)—*January* 4, 1875, Vol. 36, pp. 390–391. (B.)

934. Where, by the payment of certain allowances to officers "advanced" under the act of January 24, 1865, (13 Stat., 424,) their advancement seems to

have been recognized as "promotion," the error should not be perpetuated by extending it to their pay, but should be corrected by checking the amounts improperly allowed from whatever may be due them.—*January* 4, 1875, Vol. 36, p. 391. (B.)

935. The provisions of the act of March 3, 1873, relative to increase of pay to officers subject to examination, (17 Stat., 555, section 1495, Rev. Stat,) do not apply to the case of a naval officer who, prior to the passage of the act, had already passed an examination for promotion. Hence, where a passed assistant engineer became entitled to examination on May 18, 1868, by having completed the three years' sea service required by Navy Regulations; was ordered to examination, for promotion to the rank of second assistant engineer, on January 8, 1873; passed said examination February 26, 1873; was nominated to the Senate March 1, 1873, and confirmed March 23, 1873: *Held*, that he was entitled to the promoted pay from the date when he completed his sea service and became entitled to his first examination.—*May* 24, 1877, Vol. 39, pp. 91–93. (C.)

936. So where an officer completed his three years' sea service prior to, but was not actually examined until after March 3, 1873, (the delay not arising through any fault on his part:) *Held*, that he was entitled to promoted pay from the date at which he completed his sea service.—*September* 22 (C.) and *October* 24, 1877, Vol. 39, pp. 385–389, 420–421; *February* 24, 1882, Vol. 45, pp. 256–257. See, also, Vol. 39, pp. 429, 474–475, *October* 26 and *November* 21, 1877. (U.) But there can be no promotion unless there is an existing vacancy.—*June* 15, 1883, Vol. 47, pp. 372–373. (U.)

937. A subsequently successful examination for promotion to the position of passed assistant engineer in the United States Navy, under section 1505, Rev. Stat., does not entitle the officer, who failed on his first examination, to increased pay from the same date (less one year) as if his first examination had been successful. Such re-examination is not the delayed examination contemplated by section 1562, Rev. Stat.—*February* 26, 1878, Vol. 39, pp. 690–692.

The rule is the same in regard to a passed assistant surgeon.*—*April* 25, 1879, Vol. 41, pp. 348–349; *January* 26, 1882, Vol. 45, pp. 149–152. (U.)

938. An officer advanced in his grade under the provisions of the act of April 21, 1864, (section 1506, Rev. Stat.,) or of that act as amended by the act of June 17, 1878, (20 Stat., 150,) is not entitled to any increase of pay on account of such advancement. Such an advancement has the effect to place the officer in a better position in regard to future promotion, but until a promotion takes place the advancement can have no effect on the rate of pay.—*April* 1, 1872, Vol. 34, pp. 413–414; *January* 4, 1875, Vol. 36, pp. 390–391 (B.); *March* 11, 1880, Vol. 42, pp. 452–455. (U.)

d.—Increased pay.

939. The laws, in all cases of pay graduated upon length of service, provide for service from a specific date, either from date of appointment or from date of commission. In the case of surgeons in the Navy all the laws agree in graduating the pay from the date of commission, and not from the date of promotion or rank, except as provided for in section 7 of the Navy

* Overruling decision of date of May 4, 1875, in the cases of Lieut. F. A. Nichols and Engineer J. M. Emanuel.—Vol. 36, pp. 564-566.

appropriation act of July 15, 1870, (16 Stat., 333.)—*November* 30, 1870, Vol. 33, pp. 360–361. (B.)

940. "L.," having served for a period as a volunteer acting assistant paymaster, received an appointment as passed assistant paymaster in the regular Navy. He claimed to be entitled, under section 3 of the act of March 2, 1867, (14 Stat., 516, section 1412, Rev. Stat.,) to the benefit of the service performed by him as a volunteer, so far as to have his graduated pay, under section 3 of the appropriation act of July 15, 1870, (16 Stat., 333, section 1556, Rev. Stat.,) computed from the date of his original appointment in the volunteer Navy: *Held*, that his claim could not be allowed; that the intent of the law is simply that the volunteer service shall count the same as the regular service, but not that a volunteer officer shall, upon appointment to a higher grade in the regular Navy, reap a benefit from his period of service as a volunteer which he would not be entitled to reap from a like period of service as a regular.—*September* 27, 1871, Vol. 34, pp. 175–177. (B.)

941. In computing the increased pay of a passed assistant surgeon, his time should be counted from the date of his appointment to that grade, and not from the date of his appointment as assistant surgeon.—*January* 3, 1874, Vol. 35, pp. 552–553. (B.)

942. S., an assistant paymaster in the Navy, claimed that under section 1412, Rev. Stat., he was entitled to the benefit of his previous service as paymaster's clerk: *Held*, that he was not so entitled.—*June* 17, 1876, Vol. 38, pp. 98–99. (C.)

943. A warrant officer in the Regular Navy, who was transferred to that grade from the rank of mate in the volunteer service, is entitled to credit for the

period of his service as mate.—*December* 17, 1880, Vol. 43, pp. 426–427. (U.)

944. The act of March 2, 1867, (14 Stat., 490,) provides for the appointment of civil engineers, United States Navy, by the President, by and with the advice and consent of the Senate. (United States Constitution, article 2, section 2.) Parties who served as civil engineers previous to this act, under appointment by the Secretary of the Navy, cannot be regarded, because of such service, as naval officers or enlisted men; they were simply employees. Hence, in determining their rate of pay, they cannot be credited, under the act of August 5, 1882, (22 Stat., 284,) with the time passed in the service under such an appointment.—*December* 28, 1882, Vol. 46, pp. 535–536. (U.)

945. The Navy appropriation act of August 5, 1882, (22 Stat., 287,) which provides that "all officers of the Navy shall be credited with the actual time they may have served as officers or enlisted men in the Regular or Volunteer Army or Navy, or both, and shall receive all benefits of such actual service in all respects in the same manner as if all said service had been continuous and in the Regular Navy," should not be construed as conferring benefits different from or additional to those that would have accrued to the officer if the services had been continuous and in the Regular Navy.—*December* 29, 1882, Vol. 46, pp. 540–541; *January* 3, 1884, Vol. 49, pp. 553–555. (U.)

946. Section 1556, Rev. Stat., fixes the pay of a boatswain at certain rates during the "first three years after date of appointment," and at certain higher rates during the second, third, and fourth three years after such date, and under its provisions a boatswain is not entitled to the higher rates because of services

rendered in a different grade. The act of August 5, 1882, (22 Stat., 287,) limits a boatswain claimant to the benefits he would have received if his former services had been continuous and in the Regular Navy. Such officer is entitled to *credit* for all the time he has served; but credit which would not have increased his rate of pay if he had served in the Regular Navy, cannot affect his rate of pay under the act of 1882.—*January* 2, 1883, Navy Division Letter Book, No. 3, pp. 27–30; Vol. 49, pp. 553–555. (U.)

947. The retroactive effect of the act of August 5, 1882, (22 Stat., 287,) was not involved in the claim of Boatswain Joseph McDonald for increased pay under the act of March 3, 1883, which was referred May 4, 1883, to the Attorney-General for his opinion; his claim under the latter act having been previously disallowed on the ground that he had rendered no previous service as *boatswain.*—*August* 16, 1883, Navy Division Letter Book, No. 2, p. 350. (U.)

948. A gunner who last entered the United States Navy July 8, 1872, but who had previously served as gunner from January 8 to September 8, 1862, is entitled to the increased rate of pay provided by the act of August 5, 1882, (22 Stat., 287.)—*July* 31, 1883, Vol. 47, p. 506. (U.)

949. It is the uniform custom of the accounting officers to credit all naval officers on the retired list, when on active duty, for length of service in the same manner as if they had not been retired. (See act of December 21, 1861, section 4, 12 Stat., 329; section 1463, Rev. Stat; also, opinion of Attorney-General Bates in Reynolds' case, 10 Opin., 332.) But when such officers have been relieved from active duty, it is the custom to refuse to allow them any credit what-

ever for any time so passed on active duty.—*January* 6, 1883, Vol. 46, pp. 578–579. (U.)

e.—Furlough pay—leave pay.

950. The act of July 15, 1870, (16 Stat., 330,) did not deprive the Secretary of the Navy of the power to place an officer in active service on furlough, and, consequently, on furlough pay.—*April* 20, 1876, Vol. 37, p. 640. (C.)

951. The prohibition in the act of July 22, 1874, (18 Stat., 192,) against any allowance in excess of six months' leave pay, to any officer of the Navy dismissed from the service and restored to the same under section 12 of the act of March 3, 1865, (13 Stat., 489,) except where it appears that such officer has demanded and continued to demand, in writing, as often as once in six months, a trial, as provided for in said section 12, is imperative upon the accounting officers.—*July* 3 and *December* 1, 1876, Vol. 38, pp. 135–137, 407. (C.)

f.—Extra pay.

952. Section 4 of the appropriation act of July 12, 1870, (16 Stat., 250,) repeals the provisions of the acts of August 31, 1852, and March 3, 1853, (10 Stat., 100, 220,) granting extra pay to certain officers and enlisted men of the Navy, Marine Corps, and Revenue Service, who served in the Pacific Ocean on the coasts of California and Mexico during the Mexican war and subsequently.—*January* 27, 1873, Vol. 35, pp. 145–146. (B.)

953. A clerk to the commanding officer of a United States vessel serving in the Mexican war, if he served out the term of his engagement, or was honorably

discharged, is entitled to the three months' extra pay provided for by the act of February 19, 1879, (20 Stat, 316.) The act of March 3, 1835, (4 Stat., 755,) seems to recognize clerks as officers, as does also section 4695, Rev. Stat.; and they are referred to as officers in divers provisions contained in the Navy Regulations.—*November* 28, 1879, Vol. 42, pp. 139–140. (U.)

954. An assistant naval constructor, with the relative rank of master, is an officer of the Navy within the meaning of General Orders No. 75, Navy Department, May 23, 1866, and as such is entitled to the extra compensation authorized by said order.—*January* 18, 1881, Vol. 43, p. 511. (U.)

g.—Upon retirement.

SEE, ALSO, PAY OF THE NAVY, (*a*,) 911–912, (*c*,) 931; WITNESSES, 1211.

955. An officer of the Navy promoted after retirement cannot draw pay for the advanced grade.—*April* 6, 1869, Vol. 32, pp. 159–161. (B.)

956. Chiefs of bureaus in the Navy Department, retired before the enactment of the Revised Statutes, by reason of age or length of service, are entitled to receive seventy-five per centum of the sea pay of a commodore.—*May* 18, 1876, Vol. 38, pp. 24–27. (C.)

957. A staff officer of the Navy, retired while chief of a bureau in the Navy Department, is entitled to receive pay equal to seventy-five per centum of the sea pay of a commodore on the active list.—*April* 2, 1877, Vol. 38, pp. 666–668. (C.)

958. The provisions of sections 1457, 1458, 1459, and 1462, Rev. Stat., prohibit the allowance of active duty pay to any (naval) officer after the date of his

retirement, even though he may have been kept on active duty after that date.—*February* 24, 1877, Vol. 38, pp. 598. (C.)

959. A captain in the Navy was retired on furlough pay September 13, 1855. He claimed an allowance of one-half sea pay, on the ground that section 1588, Rev. Stat., after classifying the retired officers entitled to seventy-five per centum of the sea pay, provides that "the pay of all other officers on the retired list shall, when not on active duty, be equal to one-half the sea pay": *Held*, that this section must be considered and construed in connection with sections 1454 and 1593, Rev. Stat., and that when so construed it does not warrant the allowance claimed by the officer.—*April* 19, 1883, Vol. 47, pp. 208–210. (U.)

960. There is no lawful authority for issuing any order, except in time of war, that will entitle a retired naval officer to duty pay.—*April* 7, 1884, Vol. 48, p. 569. (U.)

PAYMASTERS.

See, also, Bonds, 108; Claims, 280, 282; Jurisdiction, 660; Laundrymen, 666; Pay and Allowances, 758; Post-traders, 1023-1024; Settlements, 1108; Travelling Expenses, 1177; Wills, 1205, (*note.*)

961. Where no survey and inventory of the effects of a deceased paymaster and of the public property left by him is ordered, pursuant to paragraph 1071 of the Navy Regulations of 1865, (paragraph 10, chapter II of Navy Regulations of 1878,) by the commanding officer of the vessel upon which the paymaster died while in discharge of his duties, the responsibility of

any deficiency of cash, clothing, &c., found in the adjustment of the deceased officer's accounts, rests upon the derelict commanding officer.—*December* 14, 1868, Vol. 32, p. 1. (B.)

962. In all cases where paymasters seek relief under the act of March 16, 1868, which authorizes the proper accounting officers to allow credits for overpayments made in good faith on public account since the commencement of the rebellion and prior to the passage of said act, (15 Stat., 42,) they should be required to state on oath the circumstances under which overpayments were made by them and the grounds upon which they base their claim to be credited therewith. No relief should be allowed unless due care and diligence has been observed. When, however, the death of a paymaster has rendered explanation impossible, a liberal construction should be placed upon the law; and if neglect of duty cannot properly be implied, a credit for the repayment should be granted.—*February* 15, 1869, Vol. 32, pp. 88–89. (B.)

963. Paymasters are not authorized to adjust back differences of pay. Such cases should be forwarded to the Fourth Auditor of the Treasury, for settlement by the proper accounting officers.—*January* 3, 1874, Vol. 35, p. 553. (B.)

964. Where supplies are required by a United States vessel at a station abroad, either the paymaster acting as storekeeper at the station should make the purchases himself (taking up the amount in his accounts) and turn over the supplies to the paymaster of the ship, taking his receipt therefor, or the latter should make the purchases direct and furnish, in detail, the original bills properly receipted by the dealer

furnishing the supplies.—*January* 11, 1875, Vol. 36, pp. 398–399. (B.)

965. W., an additional paymaster, United States Army, took credit, upon settlement of his accounts, for paying to F., a soldier, sixty-four dollars, as the soldier's pay from April 30th to August 31st, 1864. It afterwards appeared that the paymaster merely gave his official due-bill for the amount. The soldier having been killed, the due-bill was found upon his person and was forwarded by his heirs to the accounting officers, with a claim for arrears of the soldier's pay, which was allowed and paid and the amount thereof stopped against the paymaster. *Held*, that the stoppage was rightfully made; that delivery of the due-bill to the soldier was not a payment to him, and that the payment subsequently made by the Government to the soldier's heirs, was not a payment of the due-bill, but of the undrawn pay of the soldier.—*March* 29, 1881, Vol. 43, pp. 666–667. (U.)

966. An Army officer's resignation was accepted March 30, to take effect May 31, 1877. Paymaster Sharp paid him for April and May, 1877, as follows: May 9, for April, one hundred and twenty-eight dollars and thirty-three cents; May 31, for April and May, two hundred and fifty-six dollars and sixty-six cents. The latter amount was suspended against the paymaster, one-half thereof because of the double payment for April, and the other half because certificates of the officer's non-indebtedness were not found with the vouchers. It appearing that the officer had never drawn pay for January, 1867, it was proposed to apply his undrawn pay for that month to offset the double payment for April, and thus to relieve the paymaster to that extent: *Held*, that inasmuch as the

officer stood charged on the Third Auditor's books with the sum of six hundred and seventy-three dollars and ninety-six cents, for ordnance and ordnance stores for which he had become responsible but had failed to account, his January pay should, pursuant to paragraph 1363 of the Army Regulations of 1863, be applied to reimburse, in part, the United States for the public property unaccounted for, and not to the relief of the paymaster: *Held, further*, that as the paymaster was apparently justified in paying the officer for the month of May, (inasmuch as the latter was still in the service when the payment was made, and the paymaster had then no knowledge of his resignation, and was not in fault in being without such knowledge,) so much of the suspension as was made because of the May payment might be removed.—*July* 26, 1881, Vol. 44, pp. 332–334. (U.)

967. A paymaster who, with knowledge of the fact that an officer is in arrears to the United States, pays such officer without deduction on account of the arrearage, will be responsible to the United States for any loss sustained by reason of such payment, whether stoppage has been ordered or not.—*August* 27, 1881, Vol. 44, pp. 422–423. (U.)

968. Where an assistant paymaster, United States Navy, was detached from his vessel and ordered to proceed home, settle accounts, and at the expiration of the period allowed for the settlement to await orders: *Held*, that he was entitled to other-duty pay during the time allowed by regulation for the settlement of his account.—*January* 24, 1883, Vol. 46, pp. 629–630. (U.)

969. Where a passed assistant paymaster, United States Navy, was assigned to duty on shore, the

Secretary of the Navy certifying that his employment on shore duty was "required by public interest," but no clerk was named in the certificate: *Held*, that the necessity of the employment of a paymaster at a station included the necessity of the employment of the clerk to which he was by law entitled, and that the paymaster was entitled to credit for salary paid to the clerk.—*January* 24, 1883, Vol. 46, pp. 630–631. (U.)

970. When his company was paid, a soldier was absent, in confinement, at another station. The amount which appeared from the roll to be due was paid by the paymaster to some one else, for delivery to the soldier. Before the date of payment the soldier had been sentenced to forfeit all pay and allowances due him, and he deserted shortly after that date: *Held*, that the payment was unauthorized, and that the paymaster was responsible to the United States for the amount so paid.—*March* 4, 1882, Vol. 45, pp. 287–291. (U.)

971. A paymaster being an agent of the United States, and the agency being for the benefit both of himself and the United States, he is bound not only to good faith, but to the exercise of reasonable diligence and care. If he disregard his instructions he cannot successfully plead that he has been duly diligent and careful. His instructions are contained in the laws and the regulations made in pursuance thereof, and there is no law or regulation authorizing a paymaster to make payment of an amount due a soldier in any other manner than to the soldier in person; and if payment be made to some other person and loss result to the United States, the paymaster is chargeable with the amount of the loss.—*March* 4,

1882, Vol. 45, pp. 287–291. (U.) See, also, sections 1291 and 3477, Rev. Stat.

972. It is sometimes urged in such cases that, as a matter of fact, the soldier's pay is, in his absence, frequently turned over to some one else, for delivery to him, and that the vouchers for such payment usually pass without objection. The answer to this is, that payments so made are nevertheless made at the risk of the paymaster, and that charges are not often raised on account of such payments for the reason that loss does not often result to the United States, and hence an occasion for raising a charge does not often occur. A paymaster cannot defend himself by showing a conformity to a usage which the law and the regulations do not sanction.—*March* 4, 1882, Vol. 45, pp. 287–291. (U.)

973. Where a voucher indicates that a soldier paid thereon was short paid by reason of arithmetical mistakes, the paymaster is only entitled to credit for the amount actually disbursed, and the amount of the short payment will be allowed to the soldier upon application to the accounting officers.—*November* 6, 1882, Vol. 46, pp. 397–398. (U.)

PENALTIES.

See Contracts, 358; Deserters, 412.

PENSIONS.

SEE, ALSO, BOUNTY, 179; FORGERY, 501; TRANSPORTATION, 1152.

974. A member of Congress is "in the service of the United States," within the meaning of section 1 of the act of March 3, 1865, (13 Stat., 499.)—*February* 8, 1869, Vol. 32, pp. 70–75. (B.)

975. Where payment of a pension was made to one who falsely personated the rightful claimant: *Held*, that a second payment should be made to the true claimant.—*April* 24, 1869, Vol. 32, p. 194. (B.)

976. A surgeon designated or appointed to make biennial or other examinations of pensioners is not by virtue thereof a person "in the civil service of the Government," within the meaning of section 1 of the act of March 3, 1865, (13 Stat., 499.) Vol. 32, p. 237. Nor does that section apply to officers whose compensation, whether by fees or by annual or other stipend, is transient or fluctuating.—*May* 14, 1869, Vol. 32, p. 238. (B.)

977. Payment of a pension, in the case of a pensioner who has become insane since issue of the pension certificate, may be made to his guardian or conservator; but the letter of guardianship, or a copy thereof, should be filed with the vouchers for the first payment, and at each subsequent payment there should be furnished, as evidence of the pensioner's continued insanity, the affidavit of two credible witnesses, or a certificate of a responsible officer of an insane asylum.—*August* 23, 1869, Vol. 32, p. 418. (B.)

978. Payments cannot lawfully be made to the wife or daughter of an insane pensioner. A committee or guardian should be appointed.—*June* 15, 1877, Vol. 39, p. 159. (C.)

979. Where at the date of the re-marriage of a pensioned widow, there was a balance due which had accrued since the date of the last regular payment: *Held*, that notwithstanding more than three years had elapsed since it became due and payable, section 3 of the act of July 27, 1868, (15 Stat., 235,) did not apply, and payment of such balance might lawfully be made.—*October* 5, 1869, Vol. 32, p. 471. (B.)

980. The Attorney-General having expressed the opinion that in the absence of any statute expressly authorizing payment, a claim not adjudicated during the life-time of the claimant, and therefore not reduced to possession, does not become so vested as to be transferable to representatives, the amount accrued upon the pension certificate of a person who died while his or her application was pending, can be paid only in accordance with express provisions of law. Section 9 of the act of July 27, 1868, (15 Stat., 236,) which is held to supersede all other acts and parts of acts relative to the class of applicants distinctly specified therein, authorizes payment of the accrued amount to decedents' "heirs or legal representatives." Where there is a certificate of court that there is neither widow, child, father, mother, nor dependent brother or sister surviving, nothing will be paid unless there be presented some duly rendered and attested bill for the care of, or attendance upon decedent during his last illness, or for expenses incurred therein, or for his burial. The actual amount of such expenses, from considerations of equity, will be allowed; the residue will revert to the Government.—*November* 3, 1870, Vol. 33, pp. 328–329. (B.) But the accounting officers cannot make an allowance, to compensate the person who bore the expenses of the last sickness and

burial of a deceased pensioner, until the amount of the pension has been certified by the Commissioner of Pensions.—*September* 25, 1882, Vol. 46, pp. 283–285 (U.); Sec. 4718, R. S.

981. Widows of soldiers of the war of 1812 are exempt from the rule requiring at each period of payment an affidavit of two witnesses that the claimant has not re-married; and payments in this class of cases will be admitted to the credit of pension agents upon the pensioner's oath of non-remarriage.—*March* 5, 1872, Vol. 34, p. 371. (B.)

982. Pensioners enlisted in the "General Service" for clerical duty are within the exception contained in the last proviso of the pension act of April 30, 1844, (5 Stat., 657,) and, excepting for the period between March 3, 1865, and June 6, 1866, are not debarred from drawing their pensions.*—*March* 20, 1872, Vol. 34, pp. 399–400. (B.)

983. Surgeons, in making the required biennial examination of pensioners, have no right under the law or regulations to reduce pensions prospectively. The act of March 3, 1859, (11 Stat., 439,) is explicit on this subject.—*May* 10, 1871, Vol. 33, pp. 631–632. (B.)

984. Under section 8 of the act of July 4, 1864, relating to pensions, (13 Stat., 388,) fees to any surgeon for biennial, annual, semi-annual, special, or other examinations of invalid pensioners will not be allowed in excess of the amount authorized by the act of July 14, 1862, (12 Stat., 566,) namely, one

* The proviso above referred to is as follows: "*And provided also*, That no person in the Army, Navy, or Marine Corps shall be allowed to draw both a pension as an invalid and the pay of his rank or station in the service, unless the alleged disability for which the pension was granted be such as to have occasioned his employment in a lower grade, or in some civil branch of the service."

dollar and fifty cents to each surgeon for each individual case in which he shall personally make examination, whether separately or as a member of a board of examiners organized pursuant to the first-mentioned act.—*June* 17 and *October* 12, 1871, Vol. 34, pp. 47, 195–196. (B.)

985. In all cases where a guardian or committee has been appointed subsequently to the issue of a pension certificate in which no guardian has been named, or in any case where the person claiming payment as guardian is other than the one named in the pension certificate, a certificate of court, or other proof of guardianship, must be furnished, to be filed with the vouchers for the first payment thereafter made; and pension agents should retain at the agency a copy of such certificate. Afterwards, a brief indorsement by the agent at each time of payment, to the effect that he has on file evidence of guardianship, will be accepted as sufficient.—*June* 29, 1871, Vol. 34, p. 69. (B.)

986. Whenever it becomes necessary, in order to procure satisfactory medical evidence of the condition of a pensioner or of any applicant for a pension, to send a surgeon to his residence to make an examination there, such surgeon will be allowed, in addition to a fee prescribed by law, his actual travelling expenses as shown by vouchers approved by the Commissioner of Pensions.—*July* 17, 1871, Vol. 34, pp. 88–89. (B.)

987. Where a pensioned widow with minor children abandons *any one* of said children, she thereby, under section 12 of the act of March 3, 1873, (17 Stat., 570,) forfeits the right to receive payment of any part of the pension.—*June* 26, 1874, Vol. 36, p. 118. (B.)

988. An order of a State court directing that certain costs, expenses, and counsel fees growing out of a guardianship contest be paid out of pension moneys due the wards, held to be inoperative. Pensions, being granted under the laws of the United States, can be paid only as ordered by the executive officers of the Government, and cannot legally be appropriated to any other purpose than the use and benefit of the pensioners.—*January* 29, 1875, Vol. 36, p. 423–424. (B.)

989. Cases arising under section 4718, Rev. Stat., relating to accrued pensions, must be submitted to the accounting officers for approval before payment is made.—*January* 28, 1876, Vol. 37, p. 399. (C.)

990. A pension agent's check for the amount of one quarter's pension was sent through the post-office to the payee, but was lost in the mails. The pensioner made application for a duplicate thereof, but died before the required indemnity bond was perfected: *Held*, that the bond should be executed by, and the duplicate check delivered to the administrator, executor, or other legal representative of the deceased pensioner; that the deposit of the original check in the post-office constituted a payment, and the check thereupon became the property of the pensioner and a part of the assets of his estate, to descend according to the *lex domicilii*; that the "accrued pension" referred to in section 4718, Rev. Stat., is that portion of the pension which has accrued but has not been thus paid.—*March* 6, 1877, Vol. 38, pp. 612–613. (C.)

991. When a pension check has once been issued from the hands of the pension agent and a receipt taken, the title to the money becomes vested in the

pensioner, and is a part of his estate. Where such check is lost or mislaid, and the pensioner dies before the time (six months) has elapsed for the issue of a duplicate check, the latter, when issued, must be regarded as assets of the decedent's estate and, as such, will descend according to the law of the domicile of the pensioner. It cannot be claimed, under section 4718, Rev. Stat., as "accrued pension," out of which may be paid the expenses of the pensioner's last illness and burial.—*March* 6, 1877, Vol. 38, pp. 612–613 (C.); *February* 23, 1878, Vol. 39, p. 680. (U.)

992. Bills for the support of a minor child, deceased, or for his funeral expenses, will, when there are pension arrearages due, be paid to the rightful claimant in the same manner as bills are paid in other classes of cases of deceased pensioners; hence the guardian is not prohibited from claiming personal expenses incurred by him, growing out of the minor's last illness and burial, though he can no longer claim as guardian.—*September* 22, 1877, Vol. 39, pp. 389–390 (C.); *January* 31, 1882, Vol. 45, p. 181. (U.)

993. A pension that has been duly certified to minor heirs cannot be lawfully withheld from them on account of overpayments made to their mother. Their right is created by operation of law, and the law vests the right in each child. This right is not derived from the father or the mother, but the gift or grant proceeds directly from the Government, and the child takes the grant free from any question growing out of the acts of the mother.—*June* 5 and *July* 17, 1878, Vol. 40, pp. 246–247, 349. (U.)

994. The sole object of the proviso in the act of June 14, 1878, (20 Stat., 112,) is to reduce the surgeon's fee for the particular service therein specified,

and the act does not contemplate a change as to the fund out of which payment may be made; hence the rule announced in the circular of the Second Comptroller and Third Auditor, of date of October 10, 1871, to the effect that "Payments of pensions, as well as surgeon's fees and expenses of artificial limbs, will be made for all time due and claimed, on one voucher, and paid out of the money appropriated for the fiscal year in which the voucher is presented and paid," is still in force —*September* 4, 1878, Vol. 40, pp. 455–460. (U.)

995. For examinations made by single surgeons prior to June 14, 1878, the surgeon is entitled to a fee of two dollars for each examination.—*September* 4, 1878, Vol. 40, p. 459. (U.)

996. The failure of a child under the age of sixteen years to apply for the pension to which it is entitled cannot be considered laches, inasmuch as a child under that age cannot bind itself either by its acts or its negligence —*October* 1, 1878, Vol. 40, p. 533. (U.)

997. There is no authority of law for making advances to needy pensioners before the regular payments become due. Any plan for relieving necessitous cases by making formal payments by check oftener than is provided by law would be inexpedient and contrary to the spirit and intent of the statute.—*October* 18, 1878, Vol. 40, pp. 580–581. (U.)

998. The grant to a child or the children of a soldier, made by section 4702, Rev. Stat., although conditional, is made by the Government directly to such child or children. When the soldier dies, leaving no widow, or when the widow dies, the condition is fulfilled or removed, and the grant to the children be-

comes absolute. These children do not acquire the right from the father or from the mother, and their rights are as distinct as if no relation of brother and sister existed. They are not "jointly" entitled, under section 4707, Rev. Stat That section provides for cases where the soldier leaves no children. Hence, where a deceased soldier left several children entitled under the pension laws, and a pension certificate was issued, from which, by inadvertance or otherwise, the name of one of the children was omitted, and the guardian of the other children drew (up to a given date) an amount equal to the pensions granted to *all* the children: *Held*, that the payment made to the other children, or to their guardian for their benefit, was not a ground for refusing to grant to the guardian of the omitted child the pension that inured to him during the period he was unrecognized.—*October* 1, 1878, Vol. 40, pp. 532–534. (U.)

999. Pension money lawfully paid to a guardian of a minor is no longer subject to the control of the Government, and its disposition is not a matter to be determined by the Second Comptroller.—*January* 9, 1880, Vol. 42, p. 268. (U.)

1000. L., having been previously pensioned, died in 1862. His widow drew the pension of eight dollars per month until she remarried, April 23, 1863. After the lapse of several years, a certificate was issued to the five minor children of L., to commence from January 7, 1871. On February 24, 1877, one of the children died; but before the fact of his death became known to the Department, another certificate was issued, on January 28, 1878, which purported to give the eight dollars per month that had accrued between April 23, 1863, and January 7, 1871, to the

five children. The pension agent paid to the four surviving children, not only their respective shares, but also the one-fifth certified to the deceased child: *Held*, that the payment of said deceased child's share to his surviving brothers and sister was forbidden by section 4718, Rev. Stat., and that the agent could not legally be credited therewith.*—*February* 3, 1880, Vol. 42, pp. 327–328; *January* 31, 1882, Vol. 45, pp. 180–181. (U.)

1001. A pension was duly paid to the widow of F., a deceased soldier, down to November 8, 1866, at which date she remarried and the right to the pension vested in the four minor children of the soldier. On August 10, 1878, a certificate was issued in favor of the children, which purported to grant to the four minors eight dollars per month and two dollars additional for each child. It afterwards appeared that but three of the children were living at the time the certificate issued, one of them having died April 11, 1876: *Held*, that the part of the pension that inured to the deceased child was, under that certificate, subject to the provisions of section 4718, Rev. Stat., and that payment of said child's one-fourth, unless made in reimbursement of the expenses of his last sickness and burial, was not authorized *by the certificate.*—*January* 21, 1880, Vol. 42, pp. 300–301; *February* 13, 1880, *Ibid.*, p. 360. (U.)

1002. Under the provision in section 4766, Rev. Stat., that, "pensions payable in foreign countries may be made according to existing laws," payments may be made through the instrumentality of attorneys.—*April* 10, 1880, Vol. 42, pp. 529–530. (U.)

* Application should have been made to the Commissioner of Pensions for a new certificate in favor of the survivors.

1003. A separate and distinct check should be drawn in favor of each pensioner, by name, whether the pensioner is in this or a foreign country. In cases of foreign pensioners, it may be so drawn as to show expressly that it is payable to the pensioner on the order of the attorney.—*April* 10, 1880, Vol. 42, p. 530. (U.)

1004. The widow of a deceased soldier was pensioned at eight dollars per month with four dollars per month increase because of her relation to two minor children of the deceased. Afterwards a supplemental pension certificate was issued for payment of two dollars per month to each of two other children of the deceased soldier: *Held*, that inasmuch as section 4703, Rev. Stat., provides that the increase of pension designed for the support of minor children may, in cases where children by a former wife of the deceased soldier are not supported by his widow, be paid to the guardian of such children, it is clear that cases may arise in which a certificate may properly be issued to such guardian notwithstanding a prior certificate has been given to the widow for an increase of pension because of other children of the deceased soldier: *Held, also*, that while the letter of the statute requires payment to be made to the guardian, yet if the children, while minors, become entitled to have payment made to their guardian, they may, on attaining their majority, claim the right in person: *Held, further*, that as the law makes it the duty of the Commissioner of Pensions to decide what persons are entitled to pensions, and as the pension certificate is the only proper evidence of what that decision is, the certificate must be presumed to be correct until set aside, and that it pro-

tects all parties acting under it.—*April* 24, 1880, Vol. 42, pp. 567–568; *August* 11, 1882, Vol. 46, pp. 158–159. (U.)

1005. A claim was made for reimbursement for expenses of the last sickness and burial of a deceased pensioner: *Held*, that it is clearly the duty of the accounting officers to determine whether such expenses have been borne by the claimant and, if so, to what amount: *Held, further*, that the administrative report, order, recommendation or certificate of the Commissioner of Pensions cannot take the place of an itemized statement of such expenses, and of the receipts and affidavits required as proofs that the items of expense were incurred in the pensioner's last sickness and burial.—*December* 19, 1881, Vol. 45, pp. 34–35; *August* 9, 1882, Vol. 46, pp. 144–145. (U.)

1006. The wife of an insane pensioner gave bond as his guardian, but the first payment of the pension due the estate largely exceeded the amount of the bond: *Held*, that the court possessing jurisdiction and having the facts before it, is best qualified to judge as to the sufficiency of the bond given; but that the bond offered should not under the circumstances be approved until the guardian furnish proof that the attention of the court had been particularly directed to the facts of the case and that no additional bond had been required.—*December* 22, 1881, Vol. 45, p. 46. (U.)

1007. A pension certificate issued to a certain number of minor children is not good authority for paying the whole pension to any number of them less than the number specified in the certificate.—*August* 11, 1882, Vol. 46, p. 156. (U.)

1008. Where, by reason of the death of a party, a pension certificate becomes inoperative, or the right to the pension devolves upon another party, it is the province of the Interior Department to issue such new certificates as may be necessary.—*August* 11, 1882, Vol. 46, p. 160; *September* 20, 1882, Vol. 46, p. 262; *October* 12, 1882, Vol. 46, pp. 324–325. (U.)

1009. The pension certificate is the solemn and authentic record of the decision of the Interior Department. No secondary or extrinsic evidence is admissible for the purpose of contradicting the certificate. It is the muniment of the pensioner's title to his pension, and it cannot be attacked collaterally with any more propriety than can the decision of a court. If the certificate has been erroneously issued, or if some new event has happened rendering the certificate inconsistent with the rights of the parties, the matter should be presented to the Commissioner of Pensions for re-examination, in order that a new certificate may issue whenever a change as to the payee or the amount of the pension is necessary.—*October* 24, 1881, Vol. 44, p. 581; *August* 11, 1882, Vol. 46, pp. 159–160; *October* 12, 1882, Vol. 46, p. 325. (U.)

1010. Questions concerning the abstract rights of pensioners belong exclusively to the Commissioner of Pensions and the Secretary of the Interior. The accounting officers can only deal with the construction of the pension certificate, for the purpose of determining its legal effect and approving such payments as are made in accordance with its terms.—*August* 11, 1882, Vol. 46, p. 156. (U.)

PENSION AGENTS.

SEE, ALSO, BONDS, 109; CHECKS, 250; CLERKS, 288.

1011. Extra compensation to pension agents is not allowed upon the disbursement of any amount less than fifty thousand dollars in any one year.—*August* 7, 1869, Vol. 32, p. 397. (B.)

1012. Pension agents who make payments to the treasurer of the National Asylum for Disabled Volunteer Soldiers, of the pensions of such persons as may be inmates of the asylum, are required to furnish to the Treasury Department, as a part of the voucher for such payment, a certificate of assignment of the pension to the asylum by the pensioner.—*September* 6, 1870, Vol. 33, p. 251. The assignment will be valid for the whole time that the pensioner may be an inmate and beneficiary of the Home.*—*October* 6, 1870, Vol. 33, pp. 282–283. (B.)

1013. Ordinarily the term of office of a pension agent commences at the date of the execution of his

*The following form of assignment has been approved by the Comptroller:

Whereas, It is provided by the seventh section of the act of Congress providing for the organization of a National Asylum† for Disabled Volunteer Soldiers, that soldiers, upon becoming inmates of said asylum or receiving relief therefrom, shall assign thereto their pensions, when required by the Board of Managers, during the term they shall remain therein or receive its benefits; and

Whereas, The Board of Managers of said asylum, at a meeting held on the — day of ——, 18—, did, among other things, provide; "That all beneficiaries of the asylum shall be required to have their pensions drawn by the Treasurer;"

Now, therefore, we, the undersigned, inmates of the National Asylum for Disabled Volunteer Soldiers, whose pensions are payable at the pen-

†By section 4825, Rev. Stat., the name and style of this institution was changed to "The National Home for Disabled Volunteer Soldiers."

official bond unless some other date is therein specified as the time when the bond is to take effect. Where, however, in the interest of the Government and to prevent delay in the payment of amounts due pensioners, an agent has *de facto* taken custody of the agency and discharged its duties or voluntarily become responsible for the pay of clerks who have had charge during the interval, it has been the usage to allow the period from which compensation is reckoned to commence to run from the date at which the agent so took charge; provided the performance of such service or the assumption of such responsibility was adequately shown by vouchers or otherwise in the agent's accounts.—*July* 5, 1871, Vol. 34, pp. 74–75. (B.)

1014. Pension agents are not entitled to fees for the settlement and payment of surgeons' accounts; nor can they charge for postage paid in connection therewith. But if a surgeon blunders and imposes upon an agent an extra expense in postage, the agent may properly deduct such sum from the amount of the surgeon's bill.—*January* 7, 1874, Vol. 35, pp. 557–558. (B.)

1015. Where a case arises presenting such questions that it would be unreasonable to require a pension agent to make payment, at his own risk, in advance of any decision in the Treasury Department,

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sion agency in ———, in consideration of the foregoing, do hereby assign and set over to said asylum, and do hereby authorize ———, Treasurer of the —— Branch of said asylum, his successor or successors or assigns, to receive and to receipt for, any and all pensions now due or that may become due to us while inmates of the National Asylum.

Witness our hands and seals, this — day of ——, in the year ——.

Per Certificate No. ——.

(L. S.)
(L. S.)
(L. S.)

such case may be transmitted by the Commissioner of Pensions, on behalf of the claimant, to the accounting officers, as a claim for settlement, and in that manner delay can be avoided and the agent relieved from either rejecting the claim or paying it at risk to himself.—*June* 13, 1878, Vol. 40, pp. 266–269; *May* 12, 1880, Vol. 42, pp. 625–626. Or the agent himself may transmit the case.—*May* 28, 1880, Vol. 42, pp. 664–665. (U.)

1016. A pension agent's authority to make a payment in any given case is derived from the pension certificate, and the meaning and construction of the certificate depend upon its language and upon the language of the law. Administrative orders or instructions, which do not set aside or change the certificate but merely purport to construe it or to construe the law, do not partake of the nature of findings or judgments and, if erroneous, do not afford protection to the agent or affect the rights secured by the certificate.—*March* 25, 1879, Vol. 41, p 259; *May* 12, 1880, Vol. 42, p. 623; *August* 11, 1882, Vol. 46, pp. 158–159. (U.)

1017. A pension agent is pecuniarily liable for payments made by him not in conformity with the certificate, and no officer has power or authority to relieve him from that liability. Neither the pension agent nor the accounting officers have any authority to disregard, change, or modify a duly issued and authentic pension certificate; and no letter or other document, not amounting to a new certificate, will protect a pension agent in making payment to a wrong party contrary to the directions of the certificate. The pension agent is the only person who gives bonds, or who can be made pecuniarily liable for erroneous pay-

ments, and the responsibility cannot be divided. If he makes payments contrary to the terms of the certificate, he does so at the risk of reimbursing the amount, if the payment is to a party not entitled. If he could be allowed to resort to extrinsic evidence to contradict the certificate in one respect, he could, with equal propriety, contradict it in other respects; and pensioners could not rely on their certificates as evidence of their rights.—*October* 24, 1881, Vol. 44, pp. 581–582; *August* 11, 1882, Vol. 46, p. 160. (U.)

1018. To a pension agent who pays the persons named in the pension certificate, in accordance with its directions, the certificate is a perfect protection.—*September* 20, 1882, Vol. 46, pp. 262–263. (U.)

PER DIEM.

See, also, Charter-Party, 237, 241–242; Travelling Expenses, 1174–1175.

1019. Time lost in repairing chartered vessels must be paid for precisely as any other portion of the time of service, unless the contrary is expressly provided in the charter-party or unless the time occupied in making the repairs was, by the owner's fault or neglect unnecessarily prolonged, or the repairs were made necessary by his fault.—*July* 17, 1880, Vol. 43, pp. 81–82; *January* 31, 1883, Vol. 46, pp. 658–659. (U.)

1020. Where a vessel is in the service of the Government under a charter-party, in which the owner agrees to keep the vessel "tight, staunch, and strong," and the Government agrees to pay a certain sum per

day, week, month, or year, for a specified period, and the charter party contains no stipulation in regard to time lost in necessary repairs, the owner is entitled to compensation during the time the vessel is being repaired.*—*December* 2, 1881, Vol. 41, pp. 666–668. (U.)

PILOTS.

See Agency, 19; Evidence, 463; Mileage, 701.

POSTAGE—POSTAL EXPENSES.

See Pension Agents, 1014.

POST-TRADERS.

See, also, Claims, 270.

1021. A post-trader has no lien upon a soldier's pay, and is without the security in this respect once enjoyed by the sutlers of the Army.—*September* 13,

* This question being before Comptroller Brodhead, in the case of the steamer Cosmopolitan, it was submitted, by request of the Comptroller, to the Solicitor of the Treasury, Edward Jordan, who, on July 22, 1868, made a careful review of authorities and rendered an opinion in favor of the owners. The conclusion reached by the Solicitor was approved by the Comptroller on the 25th of that month, and the rule then established has been invariably followed in the settlement of similar claims against the Government. And see Ripley *et al. v.* Scaife, Eng. Com. Law R., 188; Havelock *v.* Gedds, 5 East, 508; Parsons Mar. Law, 363–364; Minot *et al. v.* Durant, 7 Mass., 435; Spofford *et al. v.* Dodge *et al.*, 14 Mass., 65; Trinity House *v.* Clark, 4 M. & S., 288; Abbott on Shipping, 173.

1879, Vol. 42, pp. 5–8; *January* 27, 1882, Vol. 45, p. 157. (U.)

1022. Stoppages against the pay of a soldier for amounts due to post-traders, or for amounts paid by paymasters to traders for the purpose of discharging or reducing their demands against a soldier, are not authorized by law.—*September* 13, 1879, Vol. 42, pp. 7, 10. (U.)

1023. In all cases where, without consent of the soldier, payments are made by paymasters to post-traders, for advances made by the latter to recruits, the amounts so paid must be suspended in the paymasters' accounts until it shall be shown that such payments caused no loss to the Government.—*October* 12, 1881, Vol. 44, pp. 538–539; *January* 27, 1882, Vol. 45, p. 161. (U.)

1024. Where an amount due a post-trader from a soldier is paid to the trader by a paymaster, and is afterwards, by the same or another paymaster, deducted from the pay of the soldier, with his consent, as an amount due the United States, it is not the duty of the accounting officers to raise any charge against the paymaster who paid the trader, notwithstanding the irregular character of the transaction, as no loss is thereby incurred by the Government.—*January* 27, 1882, Vol. 45, p. 160. (U.) But see section 3 of the act of June 30, 1882, (22 Stat., 122–123.)

POSTLIMINIUM.

See Vessels, lost or destroyed, 1192.

POWERS OF ATTORNEY.

SEE, ALSO, ACCOUNTING OFFICERS, 5; AGENTS, 22-23; ATTORNEYS, 73, 77-79, 82, 93-94; CHECKS, 246; CLAIMS, 281; CONTRACTS, 340, 348, 354, 359; DEPARTMENT PRACTICE, 493.

1025. An attorney-in-fact does not, by virtue of his power, acquire any rights adverse to those of his principal. If he is authorized by the instrument to receive money due to his principal, he can only receive it in the name and as the money of his principal.—*November* 7, 1878, Vol. 40, pp. 613–615; *May* 22, 1882, Vol. 45, pp 551–552. (U.)

1026. A guardian appointed by a court to receive and receipt for a pension due, or to become due, to a minor, cannot transfer his authority by power of attorney.—*November* 28, and *December* 15, 1879, Vol. 42, pp. 138, 188. (U.)

1027. One member of a firm may legally give a power of attorney in the name of his firm which will bind all the members of the firm and will authorize the attorney or agent to do whatever he might properly do under a power given by all the members of the firm, within the scope of the ordinary partnership business.—*February* 19, 1880, Vol. 42, p. 385. (U.)

1028. A power of attorney, authorizing payments by disbursing officers to the attorney-in-fact, cannot be coupled with an interest, and is, therefore, not irrevocable, even though it purport to be so.—*August* 9, 1880, Vol. 43, p. 134. (U.)

1029. All payments should be made as money due to the original contractor; and if the agent act by virtue of the power, he should act in the name of his principal and not in his own name.—*March* 7, 1881, Vol. 43, pp. 615–616. (U.)

1030. A power of attorney that contemplates the transfer of a contract from the contractor to a third party is prohibited by the act of July 17, 1862, (section 3737, Rev. Stat.,) and if the United States could permit the transfer, its assent would release the sureties on the contractor's bond.—*November* 11, 1880, Vol. 43, p. 329; *January* 30, and *May* 22, 1882, Vol. 45, pp. 180, 553. (U.)

1031. Payment of accounts for definite sums of money due upon contract or by operation of law are within the prohibitions of the act of February 26, 1853, (10 Stat., 170, section 3477, Rev. Stat.,) and cannot be paid to the claimant's attorney by virtue of a general power executed before the allowance of the claim and the issuing of the warrant.*—*May* 22, 1882, Vol. 45, pp. 547–559; *June* 16, 1883, Vol. 47, pp. 373–378. (U.)

1032. The theory that certain unaudited claims, which, under the restrictions of the act of February 26, 1853, (section 3477, Rev. Stat.,) cannot be paid upon a general power of attorney, by the accounting officers, can be so paid by disbursing officers, so as

* The prohibition of the act of February 26, 1853, re-enacted by insertion in the Revised Statutes as section 3477, is as follows: "All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgments of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same."

to bind the United States, is untenable. By the provisions of the aforesaid act, a general power of attorney is effectual to authorize payment of money, only after the ascertainment of the amount due, the allowance of the claim, and the issuing of a warrant thereon; and a disbursing officer who pays a claim upon a general power of attorney before such allowance, ascertainment, and warrant does so at his own risk, and is chargeable with any loss that may thereby accrue to the United States. The requirement of section 3477, Rev. Stat., that assignments of powers of attorney shall be executed "after the allowance of such claim," is a strong indication that disbursing officers are not to pay upon general powers of attorney *at all.*—*May* 22, 1882, Vol. 45, pp. 547–559. (U.)

1033. A naked power of attorney is as clearly within the restrictions of the act of February 26, 1853, (section 3477, Rev. Stat.,) as one that attempts to convey an interest; and, hence, no attorney can receive the amount due upon a client's claim unless his power be executed after the allowance of the claim, the ascertainment of the amount due, and the issuing of the warrant.—*May* 22, 1882, Vol. 45, pp. 547–559. (U.)

1034. Because an attempt, in an instrument, to "transfer and assign," and to grant power "for receiving payment," is null and void, by reason of section 3477, Rev. Stat., it does not follow that the authority to act as the claimant's attorney is void, although evidenced by the same instrument.—*February* 16, 1883, Vol. 47, pp. 36–37. (U.)

PHYSICIANS.

See Evidence, 466; Medical Attendance, 678, 680, 683–684.

PRECEDENTS.

See Claims, 273; Department Practice, 405; Fuel and Quarters, 518.

PRISONERS OF WAR.

See, also, Appropriations, 37; Claims, 255; Pay and Allowances, 782½.

1035. The officers and crew of a chartered vessel, by the terms of whose charter-party the owners are to victual and man her, cannot, if captured and held as prisoners of war, sustain a claim against the Government for their salary or wages during the period of captivity. Such a claim is not within the jurisdiction of the accounting officers of the Treasury.—Case of Peter Marck and others, *April* 15, 1876, Vol. 37, pp. 632–634 (C.); Case of John Ray, *November* 30, 1877, Vol. 39, pp. 489–490. (U.)

1036. Where the amount allowable as commutation of rations to a prisoner of war has not been received by the relative first named in section 3 of the act of March 3, 1867, (14 Stat., 422–423,) it may be claimed and recovered in full by the one next in order named; and so on to the last.—*February* 20, 1880, Vol. 43, pp. 257–263. (U.)

1037. The right to commutation of rations granted to prisoners of war by section 3 of the act of March 2, 1867, (14 Stat., 422,) is not an inheritable right. Hence, a sister of a deceased soldier, who claims the commutation as administratrix of the deceased mother, is not entitled in that capacity; but in her right as sister she is entitled thereto, conjointly with other brothers and sisters, if there be any, according to the conditions stipulated in the aforesaid act.—*March* 4, 1882, Vol. 45, pp. 294–297. (U.)

PRIVATE PROPERTY.

See, also, Claims, 262; Deceased Civilian Employees, 383; Deserters, 422; Jurisdiction, 663; Transportation, 1154.

1038. The United States is not liable, either under the 127th Article of War (old article 95) or paragraph 153 of the Army Regulations of 1863, for money in the possession of a soldier at the time of his death, where such money was not turned over to a paymaster, or in some other way carried into the Treasury.—*August* 30, 1881, Vol. 44, pp. 427–428. (U.)

PRIZE-MONEY.

See, also, Attorneys, 75, 78; Bounty, 115.

1039. Prize-money is regarded, for purposes of taxation under the internal-revenue law, (section 86,

act of July 1, 1862, 12 Stat., 472,) as salary; and at whatever date paid is subject to the same tax as though payment had been made at the time of the award.—*October* 30, 1869, Vol. 32, pp. 501–502. (B.)

PROMOTION.

See Jurisdiction, 654, 658; Pay of the Navy, (c,) 927–938.

PROPERTY ACCOUNTS.

See Accounts, 13, 16.

PROPERTY, LOST OR DESTROYED.

See Lost Property.

PUBLIC BUILDINGS AND GROUNDS.

See, also, Appropriations, 45.

1040. That portion of the act of March 3, 1873, (17 Stat., 535,) which provides that "the officer in charge of the Public Buildings and Grounds in the city of Washington shall have the rank, pay, and emolu-

ments of a colonel," still stands in full force and effect upon the statute book. Being a provision of a local and temporary character, it comes within the proviso of section 5596, Rev. Stat. Although section 1797, Rev. Stat., provides that the Chief of Engineers shall have charge of the Public Buildings and Grounds in the District of Columbia, it does not necessarily follow that he must take immediate supervision of this work. The law contemplates that the President, through the War Department, may detail any subordinate officer of the Engineer Corps for the performance of this duty.—*April* 25, 1877, Vol. 39, pp. 15–16. (C.)

1041. The shops at Rock Island Arsenal are public buildings in the sense of section 5 of the act of June 20, 1874, (18 Stat., 110,) and the appropriations made therefor by the sundry civil act of June 16, 1880, (21 Stat., 267,) are permanent appropriations.—*August* 25, 1880, Vol. 43, pp. 170–175. (U.)

PUBLIC DOMAIN.

See Territories, 1134.

PUBLIC EMERGENCY—PUBLIC EXIGENCY.

See, also, Contracts, 342, 353 and *note*, 357, 363, 366, 369; Indian Affairs, 582; Vouchers, 1197.

1042. The existence of the "public exigency" requiring "immediate delivery or performance" in order

to justify an open-market purchase is a jurisdictional fact; and it is not only necessary that the existence of such exigency should be decided before the purchase is made, but if such decision is relied on, it should be set forth in the papers, to enable the accounting officers to act upon it. A bare approval as to the amount claimed does not necessarily show whether the amount is deemed to be due on account of sales in open market or under sealed proposals, nor whether the existence of the exigency has been considered or decided.—*February* 17, 1877, Vol. 38, pp. 573–580; *March* 20, 1877, *Ibid.*, 643–646, (C.); *November* 18, 1878, Vol. 40, pp. 633–635. (U.)

1043. Except for personal services, the general statute (section 3709, Rev. Stat.,) recognizes but two modes of purchase or contract for supplies or services, and unless "immediate delivery or performance is required by the public exigency," the purchase or contract must be made by advertising for proposals.—*February* 17, 1877, Vol. 38, pp. 575–576. (C.)

PUBLIC MONEYS.

See, also, Appropriations, 30–31; Contracts, 361; Disbursing Officers, 423–425, 430–431, 433; Soldiers' Home, 1113.

1044. The Treasury Department should advance public money only to bonded officers and to such other officers as are expressly authorized by law to disburse it.—*September* 5, 1874, Vol. 36, pp. 209–211. (B.)

QUARTERMASTERS.

SEE, ALSO, VOUCHERS, 1197.

1045. After an officer of the Quartermaster's Department has been relieved from duty, he is not entitled to the services of a clerk to aid him in closing his accounts, unless specially authorized by the head of the Department to employ one.—*May* 22, 1871, Vol. 34, p. 7. (B.)

1046. A quartermaster cannot, by receiving and, in his official capacity, receipting for money due to private parties who had made him their agent, impose any liability on the Government; therefore, no ground for raising a money charge in his official accounts is furnished by his failure to account to the owners of property sold by him, for the money which he received as their agent.—*December* 20, 1877, Vol. 39, pp. 542–544. (U.)

QUARTERMASTER'S AGENTS.

SEE APPROPRIATIONS, 49; ATTORNEYS, 81.

QUARTERMASTER'S DEPARTMENT.

SEE FUEL AND QUARTERS, 510, 524, 527, 530; TRAVELLING EXPENSES, 1164.

QUARTERMASTER'S STORES.

SEE APPROPRIATIONS, 27; ATTORNEYS, 81; CITIZENSHIP, 252; CLAIMS, 254, 264–265, 281, 287; COMPTROLLER, 307; GENERAL AVERAGE, 549–550; INDIAN AFFAIRS, 563; JURISDICTION, 639; LOYALTY, 673, 676–677; SALES, 1093; VOUCHERS, 1198.

QUARTERS.

SEE FUEL AND QUARTERS.

RAILROADS.

SEE, ALSO, ACCOUNTING OFFICERS, 8; BONDS, 106; DEPARTMENT PRACTICE, 393; INDIAN AGENTS, 614; JURISDICTION, 631, 638, 640; MILEAGE, 700, 712; SET-OFF, 1101; TRANSPORTATION, 1148, 1150–1151, 1155–1157; TRAVELLING EXPENSES, 1181.

1047. When United States troops are transported by a railroad company in box freight cars, full passenger fare will not be allowed.—*May* 10, and *June* 11, 1870, Vol. 33, pp. 122–123, 171. (B.)

1048. The Government is liable for transportation furnished on forged or stolen transportation orders, where the transportation company had no notice of the theft or forgery.—*April* 21, 1871, Vol. 33, pp. 586–588. (B.)

1049. According to the ordinary and usual signification of language, and within the meaning of the acts of Congress and the orders of President Lincoln relating thereto, the commencement of the Union

Pacific Railroad must be regarded as in the State of Iowa, near its western boundary, and the railroad bridge across the Missouri, between Council Bluffs and Omaha, as constituting a portion of said railroad, and the bridge charges on Government freight are subject to a deduction of fifty per cent., as required by law for the remainder of the road.—*May* 20, 1872, Vol. 34, pp. 495–499. (B)

1050. Certain ordnance stores consigned to Camp Halleck, Nev., were shipped over the Central Pacific Railroad and received at Halleck Station on June 19, 1875, where they were unloaded from the cars and placed in the freight-house of the railroad company. At 3 o'clock a. m. of June 20, the freight-house with its contents, including said stores, was accidentally destroyed by fire: *Held*, that no notice of the arrival of the stores having been given by the company to the proper military authorities, the company should be held liable for their value.—*June* 26, 1876, Vol. 38, pp. 120–122. (C.)

1051. Certain military stores, shipped over the Texas and Pacific Railroad, were, upon arrival at their destination—Fort Worth, Texas—deposited, for the convenience of the consignee, Captain Strang, in a warehouse of the railroad company. They were there destroyed by fire, but not until after the consignee *had been notified of their arrival and had had a reasonable period of time in which to take them away: Held*, that the loss must be sustained by the United States; that the liability of the railroad company, as common carriers, had ceased, and that as warehousemen they were not insurers of the stores against destruction by fire.—*November* 16, 1877, Vol. 39, pp. 467–468. (U.)

1052. The accounts of certain southern railroad companies for materials purchased from the War Department at the close of the civil war, should not be transferred as a whole to the accounting officers for settlement. The latter cannot reasonably take charge of the same unless default is made by said companies, in which case the accounts may be transmitted for a final statement of the balance due, preparatory to the bringing of a suit for the same.—*August* 19, 1879, Vol. 41, pp. 657–658. (U.)

1053. No portion of any moneys due the Denver and Pacific Railway and Telegraph Company can lawfully be withheld and applied to the payment of United States bonds issued to the Union Pacific Railroad Company, eastern division; but the former road, having received a land-grant, should be subjected to the usual deductions from tariff rates for Government transportation.—*April* 21, 1871, Vol. 33, pp. 589–591. (B.)

1054. The Sioux City and Pacific Railroad is subject to the same conditions as are the Union, Central, and Kansas Pacific Railroads, and its accounts for Government transportation should be settled in the same way.*—*May* 1, 1871, Vol. 33, pp. 605–606 (B). But see Vol. 47, pp. 105, 185–186, *March* 9 and *April* 13, 1883. (U.)

1055. That portion of the Chicago, Iowa, and Nebraska Railroad that extends from Clinton to Cedar Rapids is not a land-grant road.—*February* 3, 1873, Vol. 35, p. 157. (B.)

1056. The rates to be allowed the Union Pacific Railroad Company for the transportation of troops

* The act of March 3, 1873, (section 5260, Rev. Stat.,) and the act of May 7, 1878, (20 Stat., 56,) changed both the conditions and the mode of settlement.

and munitions of war of the United States over the bridge between Omaha and Council Bluffs should be, pro rata, the same as for like service upon each main line. Where no tariff rates are given *per mile*, but only for a minimum distance of ten miles, the customary rates paid for this distance should also be paid for transportation over the bridge. But where to the company's proportion of a through passenger rate there is added the sum of fifty cents on account of the bridge—being more than is charged for a like distance upon other portions of the route—this extra charge is a discrimination made in the tariff rates because of the bridge, and is therefore unlawful.—*February* 11, 1875, Vol. 36, pp. 441–444. (B.)

1057. Section 2 of the legislative, executive, and judicial appropriation act of March 3, 1873, (17 Stat., 508,) applies to the Kansas Pacific Railroad no farther than the 100th degree of west longitude; and to that extent, only, payments on account of freight and transportation should be withheld.—*June* 7, 1875, Vol. 36, pp. 638–643. (B.)

1058. The Missouri River, Fort Scott and Gulf Railroad ceased to be a land-grant road at the date of the approval of the repealing act of March 3, 1877, (19 Stat., 404.) At that date all obligation of the company to do the transportation of the Government *free* ceased and was determined. From and after that date the company should be allowed and paid at the rates agreed upon, or at the usual rates.—*July* 7, 1879, Vol. 41, pp. 549–550. (U.)

1059. When a railroad which is not itself a land-grant road connects with one that is, and a through rate over the two roads is agreed upon and adopted,

the agreement should be so made that it may be ascertained therefrom how much is due solely for that part of the service performed over the non-land-grant road If the contract provides one gross sum to be paid for the through transportation and fails to show how much of that sum is to be paid for the transportation on the non-land-grant road, no payment can lawfully be made without resort to the Court of Claims; but where it is contracted that transportation over the non-land-grant road is to be done at tariff rates or at a specified rate per mile, the contract has been considered divisible, and it has been held that payment can be made for the transportation done on the non-land-grant road. Such is not the case, however, where stipulations as to terms of transportation over the land-grant road are a material part of the consideration or inducement for the agreement in relation to the rates to be allowed over the non-land-grant road.—*May* 6, 1880, Vol. 42, pp. 594–595. See, also, Vol. 46, pp. 123–124, *August* 2, 1882, and Vol. 47, pp. 259–262, *May* 5, 1883. (U.)

1060. The administrative officers of the Government are justifiable in treating the Burlington and Missouri River Railroad of Nebraska as a land-grant road, subject to the restrictions of the act of March 3, 1875, (18 Stat., 453.)—*January* 8, 1878, Vol. 39, pp. 568–576. (U.)

1061. And this, whether the Nebraska Company is subject to the conditions imposed upon the original company in Iowa, under which this Nebraska Company acquired the road by assignment authorized by the joint resolution of April 10, 1869, (16 Stat., 54,) or to the conditions imposed upon the Pacific roads

by section 6 of the act of July 1, 1862, (12 Stat., 493.)*—*December* —, 1879, Vol. 42, pp. 632–635. (U.)

1062. It has not been customary to allow to a railroad company extra baggage rates upon excess over one hundred pounds to each passenger in transporting company property with troops, unless there was a special agreement to that effect.—*June* 29, 1882, Vol. 45, pp. 690–691. (U.)

1063. The Chicago, Saint Paul, Minneapolis and Omaha Railroad is within the prohibition of the act of March 3, 1875, (18 Stat., 453,) which among other things provides that "no money shall be paid to any railroad company for the transportation of any property or troops of the United States over any railroad which, in whole or in part, was constructed by the aid of a grant of public land, on the condition that such railroad should be a public highway for the use of the Government of the United States, free from toll and other charge."—*November* 17, 1882, Vol. 46, pp. 442–443. (U.)

1064. The fact that one or more suits, brought by a bonded road in the Court of Claims, under section 5261, Rev. Stat., have been decided in favor of the claimants does not remove the restriction contained in section 5260, Rev. Stat., nor authorize the officers of the Treasury Deparment to audit and pay, at their discretion, all other claims which they may deem to be of the same class with those in which judgments have been rendered in the claimant's favor.—*October* 1, 1883, Vol. 48, pp. 3–6. (U.)

1065. The effect of the act of March 3, 1873, (17 Stat., 508,) was to limit the jurisdiction of the account-

* It has recently been decided by the Court of Claims that this road is *not* a land-grant road.—18 Court of Claims Reports, 618.

ing officers and deprive the railroad companies of one of their then existing remedies, to wit, the settlement of their accounts in the Treasury Department. The act does not purport to determine the ultimate right of the companies to payment; and a decision that accounts of this class cannot be audited by the accounting officers is not a decision upon the merits or the validity of the claim.—*October* 1, 1883, Vol. 48, pp. 4–5. (U.)

1066. Where several parcels of Army stores, each parcel being under, but all together amounting to more than one hundred pounds, are received by the Union Pacific Railroad, at Council Bluffs, from one consignor, at one time, on one bill of lading, to be delivered to one consignee, to wit, the depot quartermaster at Ogden (the terminus of the road,) the company cannot, even when the ultimate destination of said parcels is to some point or points beyond Ogden, make separate way-bills for the several parcels and charge a freight on each at the rate for one hundred pounds. The proper charge, in such case, is the tariff rate on the aggregate weight of all the parcels.—*May* 19, 1883, Vol. 47, pp. 314–315. (U.)

1067. By the Army appropriation act of June 30, 1882, (22 Stat., 120,) the accounting officers are given authority to settle all transportation services over land-grant roads whose companies shall have complied with the requirement of said act relative to the filing of an acceptance of its provisions.—*October* 5, 1883, Vol. 48, p. 20. (U.)

1068. The act of February 24, 1871, (16 Stat., 430,) authorizing the construction of a bridge between Omaha and Council Bluffs, provided that the tolls and charges should be governed by the provisions of the

act of July 25, 1866, (14 Stat., 244,) the third section of which provides "that no higher charge shall be made for the transmission over the same of the mails, the troops, and the munitions of war of the United States than the rate per mile paid for their transportation over the railroads or public highways leading to the said bridge." It is admitted that the rates over the railroads leading from the east are not higher than the rates over the Union Pacific road, and it will avoid profitless labor in settling accounts, and will work no injustice, if the latter rates are treated as the rates of all railroads leading to the bridge. All such transportation (when the distance is more than ten miles) may properly be settled by allowing for the transportation over the bridge at the same rate per mile that is payable on the same freight and passengers, per mile, over the Union Pacific road. Where, however, it will be equally convenient and practicable, transportation from the east, terminating at Omaha, may properly be settled by allowing the same rate per mile over the bridge that is payable over the railroad by which the bridge was reached.—*June* 28, 1883, Vol. 47, p. 417. (U.)

1069. A railroad company refused to deliver annuity goods to an Indian agent, because of his refusal or inability to pay the freight thereon, and after holding them for seventeen months, claimed storeage therefor: *Held*, that the company had no right to insist that the United States must pay the freight as a condition precedent to the delivery of the goods, or to charge the United States, by way of storage, with the expense incurred in attempting to enforce payment.—*July* 21, 1883, Vol. 47, pp. 470–471. (U.)

1070. The Atchison, Topeka and Santa Fé Railroad Company, operating three several roads, (one a land-grant road and the others not,) having reduced the through rate below the sum of the three local rates: *Held*, that the only feasible mode of settlement is to apportion the whole amount between the land-grant and non-land-grant roads upon a mileage basis.—*January* 17, 1884, Vol. 48, pp 297–298. (U.)

RATIONS.

SEE, ALSO, PAY AND ALLOWANCES, 743; PRISONERS OF WAR, 1036-1037.

1071. The allowance made in lieu of commutation of spirit rations to enlisted men in the Navy does not extend to the Marine Corps, the pay of which is fixed by law and not by regulation.—*September* 12, 1870, Vol. 33, p. 258. (B.)

1072. Where an Army officer elected to receive the increased price of rations provided for by section 3 of the act of March 3, 1865, (13 Stat., 497,) he waived all right to commutation of quarters.—*January* 24, 1871, Vol. 33, p. 465. (B.)

1073. Apothecaries who sign an agreement to serve in the Navy and to be subject to its laws and regulations for a specified time, less than five years, become thereby enlisted men, and therefore entitled, when rations are not drawn by them in kind, to commutation thereof.*—*June* 6, 1873, Vol. 35, p. 347. (B.)

1074. Commutation of rations allowed to forage-masters and wagon-masters under section 10 of the

* Under General Orders No. 289 of the Navy Department, of date of February 11, 1882, apothecaries are *appointed at stations*.

act of July 5, 1838, (5 Stat., 257,) is properly payable out of the appropriation "Incidental Expenses."—*June* 20, 1878, Vol. 40, pp. 439–440. (U.)

1075. Officers of the Marine Corps are included within the restrictions of section 1269, Rev. Stat., limiting allowances; and since the passage of the Army and Navy appropriation acts of July 15, 1870, (16 Stat., 320, section 24, and 332, section 4,) have not been entitled to the sea ration allowed by section 1578, Rev. Stat.—*April* 17, 1880, Vol. 42, pp. 546–549. (U.)

1076. Only those who were entitled to the five cents per day commutation of the spirit ration are entitled to the one dollar and a half per month granted by the President's order of July 1, 1870. A paymaster's yeoman, on shore station, is not so entitled.—*May* 12, 1880, Vol. 42, p. 619. (U.) Letter of the Secretary of the Navy to the Fourth Auditor, of date of April 17, 1871.

REAL ESTATE.

See Comptroller, 306; Jurisdiction, 663; Rent, 1083–1084.

RECEIPTS.

See, also, Agents, 20; Charter-party, 242; Contracts, 349, 359, 362; Department Practice, 403; Executors and Administrators, 477–478; Indian Affairs, 574, 576–578, 590, 596; Indian Agents, 608, 610, 613; Leases, 667; Signatures, 1109; Vouchers, 1200–1202.

1077. In deciding upon the sufficiency of receipts taken by disbursing officers of the Government for

money disbursed by them, the Treasury Department is governed by the ordinary rules of the common law, with the exception made by section 3477, Rev. Stat., which renders null any attempt to give written authority to pay to agents or assignees. The receipts of treasurers of corporations, of owners and masters of vessels, and of any member of a partnership firm, are recognized by the accounting officers; and, where the amount paid is inconsiderable, great liberality of construction is indulged to avoid inconvenience to disbursing officers and to claimants. As indicated by General Orders No. 116, Adjutant-General's Office, of 1882, if payment is made to persons known to the disbursing officer to be responsible, although not strictly empowered to sign vouchers, it is the practice to accept proof subsequently presented that the money has reached the claimant.*—*February* 2, 1884, Vol. 48, pp. 360–361. (U.)

1078. When the treasurer or other officer of a corporation, who is empowered by the charter or by the law under which the corporation is organized, acts in pursuance of that power, his act is the act of the corporation, and when such authorized officer receives money for a corporation, the corporation receives it by the same act and at the same instant, and exercises its power as principal in thus receiving it. In such case, the treasurer exercises a power far removed from any delegated authority that could be embodied in an order or resolution of a board of directors, purporting or attempting to grant "powers of attorney, orders, or other authorities for receiving payment."—*June* 18, 1884, Vol. 49, pp. 103–107. (U.)

*A partner should receipt in the name of his firm; signing, also, his own name.

1079. Section 3477, Rev. Stat., places corporations under the same disability as natural persons, in regard to "powers of attorney, orders, or other authorities for receiving payment;" and attempted grants of such authority by boards of directors are of no effect.—*Ibid.*

RECONSIDERATION—REHEARING.

See, also, Accounts, 14, 15; Claims, 266; Department Practice, 387 390–391, 394, 406, 410; Deserters, 420, (*note*); Indian Affairs, 581; Jurisdiction, 650; Pay and Allowances, 756; Travelling Expenses, 1165.

1080. Where a claim was made for rent of premises for a period of several years, and a balance was certified for a part only of the time claimed, but subsequently an application was made to the Comptroller for an additional allowance, which was denied: *Held*, that whether or not the original allowance was a decision upon the whole claim, the Comptroller's decision denying an additional allowance which had been recommended by the Auditor, was a decision upon the whole claim; and that the claim could not be reconsidered by the accounting officers without the written direction of the Secretary of the Treasury.—Claim of John H. Caldwell, *December* 14, 1875, and *November* 12, 1884, Vol. 49, pp. 655–667. (U.)

1081. Where a contract for the purchase and delivery of supplies has been fully executed and an account for the balance arising under the entire contract has been settled and certified by the accounting officers, and no order has been made for a review of the decision so made, the account is not open for resettle-

ment. A claim for additional items alleged to be due under the same contract does not authorize a restatement of the account, or the certification of an additional balance on a new account. *June* —21, 1881, Vol. 44, p. 222. (U.)

RECORDS.

See Bounty, 148, 169, 176, 198, 214; Department Practice, 395, 407; Evidence, 464, 467–468, 475; State Claims, 1116.

RECRUITS—RECRUITING.

See, also, Pay and Allowances, 846; Post-Traders, 1023.

1082. There is no law authorizing payment to individuals for expenses incurred in organizing companies during the war of the rebellion. The act of July 27, 1861, (12 Stat., 276,) authorizes a refundment to States for money so expended, but not to individuals. The law of June 2, 1848, (9 Stat., 236,) applies only to volunteers for the Mexican war.—*January* 21, 1871, Vol. 33, p. 461. (B.)

REHEARING.

See Reconsideration.

REIMBURSEMENT.

SEE CLAIMS, 257, 279; CLOTHING, 293; CONTRACTS, 323, 370; FUEL AND QUARTERS, 523; JURISDICTION, 644; MILEAGE, 696, 704; TELEGRAPHS, 1132; TRAVELLING EXPENSES, 1176.

RENT.

SEE, ALSO, CONTRACTS, 362; FUEL AND QUARTERS, 510, 523; JURISDICTION, 656; LEASES, 667; RECONSIDERATION, 1080.

1083. Where real estate, in an insurrectionary State, was forcibly taken by the United States military authorities, the mere payment of rent for a portion of the period of occupation did not change the forcible holding to a holding under contract. Hence, a claim for rent for the balance of the period of occupation was disallowed as forbidden by the act of February 19, 1867, (14 Stat., 397.)—*March* 20, 1869, Vol. 32, pp. 127–129. (B.)

1084. Payment of rent for land occupied by the forts and field-works erected during the war of the rebellion, or for land from which timber was cut for use in the construction of fortifications, is not authorized by law.—*March* 12, 1870, Vol. 33, pp. 124–127. (B.)

1085. Money for the rent of property belonging to the United States must be covered into the Treasury as a "miscellaneous receipt," without abatement or deduction on any account whatever.—*May* 27, 1874, Vol. 36, pp. 62–63. (B.)

1086. A claim for rent that originated in Texas prior to August 20, 1866, cannot, unless based upon

an agreement approved by the Quartermaster-General, be entertained by the accounting officers.—*December* 4, 1875, Vol. 37, pp. 265–269. (B.)

1087. Expenditures for rent of stalls for officers' horses are illegal and cannot be allowed.—*November* 7, 1874, Vol. 36, pp. 281–282. (B)

1088. Where a claim is made for rent of lands alleged to have been purchased by claimants at "direct tax sale," which lands were occupied by the United States at and for some time after the date of sale, it is the duty of the accounting officers, under the regulations prescribed by the Secretary of the Treasury pursuant to the act of March 3, 1865, (13 Stat., 501,) to pass upon the merits of the claim; and if it shall appear that the sale was defective and that the purchaser acquired no valid title, the claim for rent must be disallowed.—*July* 12, 1876, Vol. 38, pp. 167–172. (C.)

REPAIRS.

See Per Diem, 1019-1020.

REPEAL.

1089. The acts of July 4, 1864, (13 Stat., 381,) and February 21, 1867, (14 Stat., 397,) are not repealed, but are still in force, except so far as they may have been changed by legislation since the

passage of the Revised Statutes. The "repeal provisions" of the "Revision" are not applicable to the "Appendix."—*August* 26, 1875, Vol. 37, pp. 80–86. (B.)

REQUISITIONS.

See Department Practice, 399, 408, 410.

RESPONSIBILITY.

See Accountability.

RETIRED OFFICERS.

See, also, Pay and Allowances, 813–814, 955–960.

1090. No retired officer can now be assigned to duty except as provided by sections 1259–1260, Rev. Stat., namely, to duty at the Soldiers' Home, or as professor in a college.—*August* 7, 1879, Vol. 41, p. 616. (U.)

REVISED STATUTES.

See Repeal, 1089.

REWARDS.

See Deserters, 413, 419–420.

RIVERS AND HARBORS.

See Appropriations, 40, 47, 52.

SALARIES.

See Compensation, 297; Extra Compensation, 496; Indian Agents, 606, 619–620; Jurisdiction, 652–653; Pay and Allowances, 904.

SALES.

See, also, Appropriations, 32; Indian Affairs, 568–569; Indian Agents, 602; National Home for Disabled Volunteer Soldiers, 719; Ordnance and Ordnance Stores, 733–734; Pay and Allowances, 847.

1091. Where, in September, 1865, at City Point, Virginia, the Government sold a quantity of wood at public sale, for which it was paid by the purchaser, but before the latter could remove the wood, it was taken and used by United States troops: *Held*, that as the delivery to the purchaser was merely constructive and as actual possession remained with the United States, the purchaser was entitled to have an account

stated in his favor for the amount paid by him for the wood.—*July* 1, 1870, Vol. 33, pp. 192–193. (B.)

1092. The furnishing of stores and other public property by one Bureau to another in the same Department, or by one Department of the Government to another, is not a sale within the meaning of section 5 of the appropriation act of May 8, 1872, (17 Stat., 83,) and the money value of such stores, paid by the Bureau or Department to which said stores are transferred, may be used to replace the same, and thus current appropriations be kept intact for their specific objects.*—*February* 14, 1874, Vol. 35, pp. 615–616. (B.)

1093. The proceeds of sales of quartermaster's materials, stores, or supplies to officers and men of the Army must be deposited and covered into the Treasury as miscellaneous receipts, and cannot be withdrawn or applied, except in consequence of a subsequent appropriation.—*November* 10, 1876, Vol. 38, pp. 369–372. (C.)

1094. Moneys received as proceeds of the sale of clothing and equipments of the Army should be credited to the clothing and equipping fund; reference being had to the date of the receipt of the money.—*November* 13, 1877, Vol. 39, pp. 455–459. (U.)

1095. The proceeds of sale of certain old material, (chains, &c.,) appertaining to the work upon the Louisville and Portland Canal, are not receipts of the canal, nor are they to be placed to the credit of the fund for the management of the work; they should be covered into the Treasury.—*February* 4, 1880, Vol. 42, pp. 332–333. (U.)

1096. Only the net proceeds of the sales of old material, condemned stores, &c., provided for by section

* In general such transfers of stores are without authority of law.

3618, Rev. Stat., are to be deposited and covered into the Treasury, all expenses of such sales being first deducted from the gross receipts.—*January* 13, 1882, Vol. 45, pp. 109–111. (U.)

SALVAGE.

See, also, Attorneys, 75.

1097. Where seventy-eight bales of cotton were picked up at sea by the United States steamer Vicksburg, and the court (in Boston) decreed that one-half of the proceeds of the cotton should go to the salvors and the other half be paid into the United States Treasury, and subsequently one of the salvors applied for his proportion of the moiety paid into the Treasury, on the ground that the cotton was "derelict" and belonged wholly to the salvors: *Held*, that under section 11 of the act of June 30, 1864, (13 Stat., 310,) relative to the distribution of ransom-money, salvage, &c., it was competent for the Secretary of the Navy to correct the mistake of the court, and to direct payment to the salvors of the moiety erroneously paid into the Treasury, provided it was carried to the credit of an appropriation subject to draft; but that if the money was covered in as "miscellaneous receipts," an act of Congress would be requisite to authorize payment to the salvors.—*April* 29, 1870, Vol. 33, pp. 108–110. (B.)

1098. Under section 9 of the act of July 17, 1862, (12 Stat., 607,) and section 11 of the act of June 30, 1864, (13 Stat., 310,) regulating prize proceedings,

the distribution of money awarded as salvage cannot be made until the Secretary of the Navy gives the necessary authority to proceed therewith.—*May* 18, 1872, Vol. 34, pp. 492–493. (B.)

SERVANTS.

See, also, Construction of Statutes, 311; Fuel and Quarters, 526; Pay and Allowances, 743, 819–820.

1099. Under the provisions of the Army appropriation act of July 15, 1870, (16 Stat., 320,) an officer is not entitled to transportation for servants.—*March* 22, 1871, Vol. 33, p. 542. (B.)

1100. By the Army appropriation act of July 15, 1870, (16 Stat., 315,) the quartermaster of the Marine Corps is authorized to furnish quarters in kind for the use of the servants of the officers of the corps "as now allowed by law and regulations." Under the regulations existing at the date of that law, no allowance, either by commutation or in kind, was made for servants' quarters outside of public quarters; hence no other allowance than that was authorized by the act.—*June* 10, 1871, Vol. 34, p. 30. (B.)

SET-OFF.

See, also, Claims, 282; Compromise, 299; Contracts, 319, 364.

1101. In claims against the United States by railroad companies for transportation, the accounting offi-

cers may offset the value of personal effects, belonging to troops transported, which were lost or destroyed while in transitu.—*June* 9 and 11, 1870, Vol. 33, pp. 165–167, 170–171. (B.)

1102. Where an officer was erroneously paid the three months' pay proper, provided for by the act of March 3, 1865, (13 Stat., 497,) and was afterwards allowed one hundred and forty dollars under a private resolution of Congress, (16 Stat., 702:) *Held*, that the overpayment made to him should be deducted from the sum allowed by Congress, on the general principle that a creditor may apply money of his debtor, in his hands, to the extinguishment of the debt.—*March* 10, 1871, Vol. 33, pp. 522–524 (B.); 15 Peters, 336.

1103. Protection of its citizens is due from the Government, and the fact that such protection has been afforded cannot be made an offset to a just claim for compensation for the use of a vessel seized and employed by the Government during war.—*December* 2, 1876, Vol. 38, p. 410. (C.)

1104. The Government cannot plead its expenses incurred in war, whereby the property of its citizens is protected and preserved, as a set-off against the claims of individual citizens for the use of their property.—*February* 12, 1877, Vol. 38, pp. 556–560. (C.)

1105. The application of an amount due a private in the general service, United States Army, on account of his undrawn clothing allowance, towards the extinguishment of a precedent indebtedness of the soldier to the United States, is not in violation of section 1302, Rev. Stat.; such an application not being a payment to the soldier within the meaning of said section, but only an exercise of the general right of the United

States to apply all sums due an officer or soldier for his pay and allowance, to the extinguishment of any balance due from him to the United States.—*January* 22, 1880, Vol. 42, pp. 302–303. (U.)

1106. By an overt act of disloyalty in being a party to a certain treaty entered into July 10, 1861, by and between the Creek Nation and the so-called Confederate States, the office of a United States Indian agent was terminated. At the termination of his service, said agent had in his hands a considerable sum of money for which he was accountable to the United States, and there was due to him his unpaid salary up to and including July 9, 1861: *Held*, that as in contemplation of law the moneys in his hands were converted to his own use, it may be assumed that so much thereof as was due and payable for salary was converted to his use in payment of the indebtedness of the United States to him, and that as this conversion took place prior to the passage of the act of March 2, 1867, (section 3480, Rev. Stat.,) the crediting of the amount due him on account of salary, as an offset to the moneys received by him and now demanded of his sureties, does not conflict with that section.*—*June* 17, 1879, Vol. 41, pp. 497–499. (U.)

SETTLEMENTS.

See, also, Pay and Allowances, 758.

1107. A settlement having been made by the accounting officers in favor of the widow of an Army

* Section 3480, Rev. Stat., prohibits the payment to disloyalists of any claim against the United States which accrued prior to April 13, 1861.

officer, on account of pay earned by the officer, and the widow having received payment in accordance with the settlement, and it being afterwards discovered that the officer had, in his lifetime, received part of the pay thus allowed to his widow, the Auditor certified a balance against the widow, because of the double payment: *Held*, that while the former settlement continues in force there can be no occasion to state an account against the widow.—*August* 4, 1882, Vol. 46, pp. 136–137. (U.)

1108. Where an overpayment has been made by a paymaster and the amount has been credited to him in the settlement of his accounts, such settlement is not conclusive between the Government and the officer who received the overpayment. The latter, not being a party to the settlement, his rights are not concluded, nor are his obligations affected, by the settlement.—*September* 18, 1878, Vol. 40, p. 498; *September* 27, 1882, Vol. 46, pp. 289–291. (U.)

SIGNAL SERVICE.

See Forage, 495½; Transportation, 1157.

SIGNATURES.

See, also, Forgery, 501; Frauds, 503.

1109. Where there is a mere physical inability to write on the part of a claimant and he causes his

amanuensis to sign his (the claimant's) name to a receipt, in his presence, such signature is regarded as a signing by the claimant. If, however, the claimant is afflicted with a mental disability that disqualifies him, the law requires the appointment of a committee or guardian.—*July* 18, 1883, Vol. 47, pp. 461–464. (U.)

SOLDIERS' DISCHARGES.

See, also, Bounty, 121–122; Pay and Allowances, 874–876.

1110. The act of May 21, 1872, entitled "An act to prohibit the retention of soldiers' discharges by claim-agents and attorneys," (17 Stat., 137,) was not repealed by section 31 of the act of March 3, 1873, (17 Stat., 575,) nor by the Revised Statutes, and is still in force.—*June* 9, 1879, Vol. 41, pp. 479–480. (U.)

1111. A discharge given to a private in the general service, United States Army, solely to enable him to be paid, *at that time*, the amount of clothing allowance that had then accrued, which was followed the next day by a re-enlistment, should not be treated as a "final discharge," within the meaning of section 1302, Rev. Stat.—*May* 2, 1881, Vol. 44, pp. 52–55. (U.)

1112. Soldiers discharged on surgeon's certificate are always regarded as involuntarily discharged.—*April* 6, 1882, Vol. 45, pp. 410–413. (U.)

SOLDIERS' HOME.

SEE, ALSO, CHECKS, 247; COURTS-MARTIAL, 378; DESERTERS, 417; RETIRED OFFICERS, 1090.

1113. It is the practice to regard the Soldiers' Home as a corporation, and to treat the stoppages, &c., set apart and appropriated for its support, as public moneys only so long as they remain in the Treasury, and as passing to the Home and becoming its property the moment they come into its possession. The long continuance of this practice is a strong argument in favor of adhering thereto until Congress shall otherwise direct. The stoppages, &c., aforesaid should be carried as repayments to "Pay of the Army;" there to remain until it is ascertained what portions thereof are due to the Home and what to the United States or to individuals.—*February* 10, 1883, Vol. 46, pp. 689–693. (U.)

1114. The appropriation for the support of the Soldiers' Home is an appropriation under the War Department, and sums due the Home from the Treasury should be drawn out of the Treasury on the requisition of the Secretary of War.—*February* 10, 1883, Vol. 46, pp. 689–693. (U.)

1115. Section 4819, Rev. Stat., which provides that the deductions of twelve and a half cents per month from the pay of enlisted men of the Army "shall, by the Pay Department of the Army, be passed to the credit of the commissioners of the Soldiers' Home," does not to any extent supersede or repeal the earlier provision of section 236, Rev. Stat., viz, that all claims and demands whatever by or against the United States and all accounts whatever in which the United States are concerned, shall be settled and adjusted in the De-

partment of the Treasury. Both sections may be substantially complied with if, when the accounting officers have certified to the Secretary of War the amount by them found to be due to the Home, under section 4819, their certificate be forwarded to the Paymaster-General and be returned by him, with his action, to the Secretary of War before requisition is made by the latter officer on the Secretary of the Treasury for the amount due the Home. The provisions of section 191, Rev. Stat., would, of course, be applicable to the balances certified in favor of the Home.—*February* 10, 1883, Vol. 46, pp. 689–693. (U.)

SPIRIT RATIONS.

See Rations, 1071, 1076.

STATE AGENTS.

See Agents, 21.

STATE CLAIMS.

See, also, Claims, 279, 285; Evidence, 474.

1116. It is a rule of the Treasury Department that "It is only for expenditures on account of troops, officers, and men that have been or may be mustered

into or actually employed in the U S. service that reimbursement will be made"; but it is perfectly competent for the War Department to correct its records as to muster rolls and as to the muster of troops or individuals actually in the military service of the United States, and thus to bring within the rule the payments made to them by the State.—*February* 11, 1869, Vol. 32, p. 85. (B.)

1117. In the settlement of State claims the rule adopted for the payment of officers is as follows: Commissioned officers of regiments are allowed pay from the date of enlistment of a minimum regiment to date of muster into the service of the United States, except that lieutenant-colonels are allowed pay from the date of enlistment of a minimum company to date of muster; first lieutenants from the date of enlistment of a half minimum company. The only allowance which can properly be made to officers commissioned, but not mustered, is for subsistence and quarters (board and lodging) from date of enrolment to date of muster.—*April* 23, 1869, Vol. 32, pp. 191–192 (B.); G. O. No. 61, A. G. O., of 1861.

1118. Under the act of June 8, 1872, (17 Stat., 341,) providing for the reimbursement of States for moneys expended in payment of extra surgeons or assistant surgeons for services rendered prior to their muster into the United States service, only those surgeons are intended whose services were performed in some regiment or other military organization that was subsequently mustered into the service of the United States.—*June* 15, 1872, Vol. 34, pp. 565–556. (B.)

1119. Whatever matured instalments of bounty were withheld from an enlisted man on account of advances made to him by his State, should be paid to

the State, notwithstanding the subsequent desertion of the soldier.—*April* 2, 1874, Vol. 35, p. 688. (B.)

1120. The act of July 27, 1861, (12 Stat., 276,) charges the Secretary of the Treasury with the general duty of paying the States for military expenses incurred as set forth therein, the claims to be settled on proper vouchers passed upon by the accounting officers. It is competent for the Secretary to issue regulations, under the law, and a compliance with those regulations or rules is necessary to constitute a proper voucher for allowance. An allowance forbidden by those regulations cannot be entertained by the accounting officers.—*August* 9, 1875, Vol. 37, pp. 51–52. (B.)

1121. Where a Montana war claim had been presented to, and examined and recommended for payment by General Hardie *before the passage* of the act of March 3, 1873, (17 Stat., 613,) but no specific presentation thereof was made to the accounting officers "within one year from the date of the passage of the act": *Held*, nevertheless, that the claim might properly be considered by the Third Auditor.—*June* 24, 1876, Vol. 38, pp. 117–119. (C.)

1122. Under the acts of Congress of July 17 and 27, 1861, (12 Stat., 264, 276,) the amounts paid by the several States to their adjutants-general, down to August 20, 1866, may be refunded, provided the maximum of allowance shall not exceed three thousand dollars per annum.—*February* 6, 1877, Vol. 38, pp. 533–538. (C.)

STATE MILITIA.

SEE APPROPRIATIONS, 56.

STATIONERY.

SEE PAY AND ALLOWANCES, 887.

STATUTES.

SEE CONSTRUCTION OF STATUTES, 308-316.

STATUTORY SUCCESSORS.

SEE HEIRS.

STEAMBOATS—STEAMERS.

SEE VESSELS; VESSELS, LOST OR DESTROYED; VESSELS, REPAIRS TO.

STOPPAGES—SUSPENSIONS.

SEE, ALSO, CLOTHING, 290, 292; DISBURSING OFFICERS, 433; JURISDICTION, 645-646; PAY AND ALLOWANCES, 752; PAYMASTERS, 956; POST TRADERS, 1022-1023; SOLDIERS' HOME, 1113.

1123. Where a suspension has been made in the settlement of the accounts of a disbursing officer, be-

cause of payments made to an attorney instead of to his principal, satisfactory evidence that the money actually reached the hands of the principal is all that is required to cause a removal of the suspension.—*July* 18, 1882, Vol. 46, pp. 60–61, 72–73. (U.)

SUBSISTENCE.

See, also, Indian Agents, 617; Pay and Allowances, 792.

1124. Since October 17, 1854, commutation of subsistence, at seventy-five cents a day, has been allowed only in special cases authorized by the Secretary of War.—*October* 5, 1870, Vol. 33, pp. 278–279. (B.)

SURETIES.

See, also, Bonds, 99–100, 102–105, 113–114; Compromise, 299; Contracts, 331, 340, 350, 352, 353, and note, 354, 367; Indian Affairs, 588; Indian Agents, 607, 626; Jurisdiction, 660.

1125. Where the appointment of an Indian agent appeared to have sole reference to the duties to be performed at a specified agency, and the contract of his sureties, as shown by the bond, appeared to limit their liability to his transactions at said agency: *Held*, that any addition to the agent's duties, under authority of sections 2053 and 2059, Rev. Stat., would not operate as an enlargement of the responsibility of the sureties, and that it would not be advisable to attempt

to charge the bond with any transaction outside of the agent's regular duties at the agency specified.—*April* 28, 1882, Vol. 45, p. 483. (U.)

1126. In a case where the bond of an Indian agent in terms designates him as the agent at a specified agency, the sureties on the bond cannot be held liable for funds advanced to him after the practical termination, by operation of law, of his appointment, through the severance of his jurisdiction into two distinct parts and the erection of two new and separate agencies out of what was formerly one.—*September* 4, 1883, Vol. 47, pp. 646–651. (U.)

SURPLUS FUND.

See Appropriations, 26, 34–36, 50, 55; Checks, 251; Claims, 269 Contracts, 322; Jurisdiction, 659.

TAXES.

See Assessments, 60; Prize Money, 1039.

TELEGRAPHS—TELEGRAMS.

1127. In making payment for telegraphic service over the line of telegraph between Ogden and San Francisco, a deduction of fifty per cent. from the tariff

rates should be made, agreeably to section 5 of the act of July 2, 1864, (13 Stat., 368.)—*May* 31, 1872, Vol. 34, pp. 514–517. (B.)

1128. Under the act of July 2, 1864, (13 Stat., 368,) amendatory of the act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, approved July 1, 1862, (12 Stat., 489,) the Atlantic and Pacific and the Western Union Telegraph lines, both of which run along the line of the Union Pacific Railroad, are each subject to a reduction of fifty per cent. from all sums due to them for services rendered on Government account.*—*December* 5, 1872, and *February* 18, 1873, Vol. 35, pp. 81–84; 169. See also Vol. 34, pp. 297–300, *January* 15, 1872. (B.)

1129. The Western Union Telegraph Company throughout the length of its line along the Union Pacific Railroad, from Council Bluffs, Iowa, to its connection with the Central Pacific Railroad, and thence to San Francisco, Cal., is regarded as independent of all connection with and control by the said railroad companies. Therefore, no reservation of telegraphic charges should be made.—*June* 11, 1874, Vol. 36, p. 80. (B.)

1130. The rates for the transmission of messages "to be annually fixed by the Postmaster-General," under section 2 of the act of July 24, 1866, (14 Stat., 221,) apply only to those lines of telegraph con-

* But on January 16, 1873, the Attorney-General gave it as his opinion that the Western Union Telegraph Company is not subject to the reduction of fifty per cent., and on February 18, 1873, Comptroller Brodhead informed the Secretary of War that the accounting officers would defer to the opinion of the Attorney-General, and would admit payments made in conformity therewith.—*February* 18. and 21, 1873, Vol. 35, pp. 169–171; 176–177. (B.)

structed through and over the public domain, but independent of the railroads constructed under the guaranties and conditions of the act of July 1, 1862, (12 Stat., 489.) It follows that the rates to be paid for messages transmitted over the Western Union lines, not thus constructed, but erected along the line of the Kansas Pacific Railroad, are the tariff prices, one-half of which is to be withheld and applied to the payment of the bonds issued to that company. Section 5 of the act of July 2, 1864, (13 Stat., 358,) and section 2 of the act of March 3, 1873, (17 Stat., 508,) prohibit payment to the railroad, "on account of freight or transportation," thus plainly allowing payment of a moiety of tariff rates to the telegraph companies.—*April* 21, 1875, Vol. 36, pp. 559–560. (B.)

1131. The cost of transmitting by telegraph the orders of the Navy Department to the officers in command at the navy-yards and stations, and the return telegrams relating to the same, should be considered expenses occurring in the Navy and not in Department service.—*July* 28, 1883, Vol. 47, p. 487. (U.)

1132. Under section 24 of the Army appropriation act of July 15, 1870, (16 Stat., 320,) payment for the services and the mileage of officers can be made by a paymaster only; but the language of the law does not devolve upon the Pay Department, solely, the reimbursement to officers (upon vouchers made out in their names) of amounts paid by them for telegraphic and postal expenses on account of the Government. In this respect the officers stand on the same footing as any creditor of the United States who has made proper and authorized advances on behalf of the Government, and they are entitled to repayment, not as official compensation, but as a return of

the advances. Such payments, therefore, may be made by any disbursing Bureau of the War Department having control of appropriations applicable to the payment of like expenditures.—*December* 14, 1881, Vol. 45, pp. 17–18. (U.)

TENANCY.

1133. Where the Government takes a lease for a year at a fixed annual rental, and at the end of a year, with assent of the lessor, holds over for and during a second year, under the terms of the lease, and at the expiration of the second year holds over with the same assent and on same terms, the tenancy must be held to be a tenancy from year to year, and cannot be terminated during the third year by a thirty days' notice of intention to vacate.—*April* 28, 1876, Vol. 37, pp. 656–660. (C.)

TERRITORIES.

1134. Associations formed under and by authority of a Territorial government for industrial and other pursuits are to be treated as bodies corporate in the States. Such associations have a right to use the public domain in constructing and using roads, bridges, &c.; and when such roads and bridges are constructed upon Government land, and are used by the Army,

reasonable compensation should be paid by the Government to the owners—the amount of compensation to be fixed by the Government officers.—*March* 26, 1879, Vol. 41, pp. 260–261; *September* 16, 1880, Vol. 43, pp. 239–241 (U.); 6 McLean, 517.

1135. Government may contract or agree, in advance, with such associations, for special rates.—*September* 16, 1880, Vol. 43, pp. 239–241. Or with an *individual* to whom the Territorial legislature has granted a charter or license.—*January* 4, 1881, Vol. 43, p. 467; *August* 2, 1881, Vol. 44, pp. 356–357. (U.)

TIME.

SEE, ALSO, CLAIMS, 261, 267, 277; DISBURSING OFFICERS, 437; DRAFTS, 446; INDIAN AFFAIRS, 583; JURISDICTION, 658–659; PAY AND ALLOWANCES, 750, 782.

1136. Where seven years had elapsed since the auditing of bounty claims in favor of certain colored soldiers, of whom nothing had been meanwhile heard: *Recommended*, that the funds in the hands of the chief disbursing officer of the Freedman's branch of the Adjutant-General's Office, for account of said claims, be deposited to the credit of the United States.—*June* 16, 1877, Vol. 39, pp. 160–161. (C.)

1137. In making up the pay-rolls of mechanics and laborers, it is not necessary or advisable to recognize fractions of hours in the footings for the month.—*October* 15, 1877, Vol. 39, p. 411. (U.)

1138. In computing travelling expenses under paragraph 1, section V, of General Orders No. 97, Adjutant-General's Office, of 1876, fractional parts of a day

must be recognized.—*November* 20, 1877, Vol. 39, p. 472; *January* 29, 1878, *Ibid.*, p. 607. The rule is to divide the day into four parts, represented by the usual three meals and a lodging, and to allow one dollar for each part, as the measure of the expense for the fraction of a day represented thereby.—*March* 23, 1878, Vol. 40, pp. 79–81. (U.)

1139. A lapse of thirty-two years since issue of a Treasury certificate is not a bar to the right of a claimant to have a new certificate in his favor, if the delay is satisfactorily explained and the claimant's possession of the original certificate and his right thereto are undisputed.—*September* 13, 1880, Vol. 43, pp. 223–224. (U.)

1140. A claim for services, presented after a great lapse of time, is not allowable on mere affidavit of the claimant unsupported by the records and officer's returns, if the returns can be found.—*March* 29, 1881, Vol. 43, p. 668. (U.)

1141. Where no express agreement is made in the contract itself as to the mode of computing time under a contract for wagon transportation, to be performed within a specified number of days after a day named, it is a well-settled rule that the day thus named is to be excluded and the transportation is to be completed within the specified number of days thereafter.—*June* 10, 1881, Vol. 44, pp. 183–184. (U.)

1142. In computing the Army pay of persons paid by the month, service commencing in February should be calculated, in all cases, as though that month contained thirty days.—*December* 2, 1882, Vol. 46, pp. 478–479. (U.)

1143. The rule requiring the recognition of fractional parts of a day in computing travelling expenses

(see section 1138, *ante*) held to be applicable to paymaster's clerks.—*April* 17, 1880, Vol. 42, pp. 545–546; *August* 17, 1880, Vol. 43, p. 159. (U.)

1144. In computing Army pay and wages earned, both the day on which service began and that on which it ended should be counted.*—*June* 20, 1878, Vol. 40, pp. 287–289. See, also, *Ibid.*, pp. 318–319. (U.)

1145. In the mere abstract computation of time, involving no consideration of wages earned during the period, the rule is of universal application that the days included in a prescribed period are computed by excluding the day of the commencement of the period and including the day of its termination; but the reason of the rule is not applicable to a case involving the computation of wages earned.—*May* 31, 1878, Vol. 40, pp. 229–231. (U.)

1146. Under the circular of March 1, 1864, (Paymaster's Manual of 1871, paragraph 184,) the 31st day of the month is to be ignored in computing Army pay. Consequently, a soldier, enlisting on the 31st day of any month, is not to be paid for the day of enlistment.—*June* 14 and *August* 12, 1880, Vol. 43, pp. 3, 140. (U.)

TRANSPORTATION.

See, also, Accounting Officers, 8; Appropriations, 39; Claims, 259; Contracts, 332, 335, 344, 358, 363; Indian Affairs, 577, 593; Indian Agents, 613; Mileage, 686, 708–710, 715; Servants, 1099; Set-off, 1101; Time, 1141.

1147. Transportation was furnished in March, 1871, by the steamer Richmond for a detachment of United

*Rule 11, on page 76, and the decision announced in section 1973, page 256, of the Digest of 1869, respectively abrogated and overruled.

State troops, to be conveyed from Saint Louis to New Orleans. The officer commanding the detachment disembarked the troops, pursuant to a telegraphic order, at Cairo, Ill. The owner of the steamer claimed the full rates specified in the transportation order, for the entire distance to New Orleans: *Held*, that he was only entitled to be paid, pro rata, for the actual distance traversed.—*April* 8, 1871, Vol. 33, pp. 570–571. (B.)

1148. A charge for the use of a berth in a sleeping-car, although made by a railroad company, is not a charge for transportation, but for lodging, and should be paid.—*July* 16, 1873, Vol 35, p. 400. (B.)

1149. The accounting officers have no authority to fix the tariff rates for Army transportation. These are either the subject-matter of contract between the carrier and the War Department, or are prescribed by military regulation and sanctioned by the Secretary of War.—*April* 20, 1875, Vol. 36, pp. 556–557. (B.)

1150. The provision in the Army appropriation act of March 3, 1875, (18 Stat., 453,) relative to the transportation of Government property by land-grant railroads, is applicable to the transportation service rendered by such roads to the Indian Bureau.—*May* 1, 1875, Vol. 36, pp. 577–578. (B.)

1151. That portion of the Montgomery and Mobile Railroad between Montgomery and Pollard, Ala., is a land-grant road, and the prohibition of the act of March 3, 1875, (18 Stat., 453,) was held to apply to a claim presented by the railroad company, notwithstanding the fact that the service was performed long prior to the passage of the act.—*August* 4, 1875, Vol. 37, p. 41. (B.)

1152. The act of June 8, 1872, (17 Stat, 338,) is in full force, and the cost of transportation of invalid pensioners, going and returning to have artificial limbs fitted, must continue to be refunded from the appropriation for invalid pensions.—*October* 7, 1875, Vol. 37, pp. 136–138. (B.)

1153. The case of a clerk of the Indian Department, travelling under orders of a proper officer, is not covered by the proviso in section 1 of the act of March 3, 1875, (18 Stat., 453,) which applies only to the payment for transportation of "property or troops," or "officers of the Army of the United States."—*November* 13, 1875, Vol. 37, pp. 229–230. (B.)

1154. The Government is not under obligation to transport an officer's household goods or private library, but simply such ordinary baggage as is actually necessary to his comfort and convenience and is carried with him on the public conveyance by which he himself travels.—*November* 22, 1875, Vol 37, p. 245. (B.)

1155. Where the Quartermaster-General declined to pay the account of the Western Union Railroad for transportation, chargeable to the appropriation for purchase of artificial limbs, under the act of August 15, 1876, (19 Stat, 203–204,) for the reason that the transportation funds of the Quartermaster's Department, for the proper fiscal year, were exhausted, it was recommended that the account be submitted to the Second Auditor of the Treasury. In such case the account should bear the approval of the Quartermaster-General and the Surgeon-General, and the reason for a departure from the customary course should appear.—*February* 13,1878, Vol. 39, pp. 649–650. (U.)

1156. The provisions of the acts of June 16 and 22, 1874, and March 3, 1875, forbidding payments to land-grant railroads, (18 Stat., 74, 138, 453,) are not remedial but restrictive, and in derogation of private rights theretofore enjoyed, and must be construed strictly. Therefore, the words "property or troops of the United States" cannot be held to embrace Indians, transported over such roads, if they are simply being conveyed to a reservation. Hence, an account of a land-grant road for the transportation of Indians should be allowed in full at the special contract rates.—*August* 18, 1879, Vol. 41, pp. 654–656. (U.)

1157. Prior to the passage of the sundry civil bill for the fiscal year ending June 30, 1884, (22 Stat., 617,) claims for the transportation of Signal Service men over a land-grant road were payable from the appropriation of one hundred and twenty-five thousand dollars, to pay land-grant railroads; but the clause in that bill prohibiting the payment of any moneys appropriated for the support of the Army for the fiscal year ending June 30, 1884, for the support of the Signal Service (excepting the pay of certain commissioned officers) excludes that appropriation from being used for such purpose. Claims of this character should now be paid from the appropriation for transportation for the Signal Service. They should not be paid by disbursing officers, but should be sent to the accounting officers for settlement.—*October* 5, 1883, Vol. 48, pp. 19–20. (U.)

1158. A soldier cannot elect whether he will take transportation to his home or commutation therefor. If the Government is able and willing to furnish him transportation within a reasonable time after his discharge, he is bound to accept it or waive his claim

altogether. It is not in his power, by paying his way home, to establish a good claim against the Government for commutation. (See section 2172 of Digest of 1869.)—*April* 3, 1879, Vol. 41, pp. 284–286; *March* 29, 1880, Vol. 42, p. 492. (U.)

1159. Under the decisions of the United States Supreme Court, the following appear to be the only railroads "on which troops of the United States are entitled to be transported free of charge," within the meaning of the act of July 24, 1876, (19 Stat., 100):

1. California and Oregon, (Central Pacific, Oregon Division).
2. Chicago, Milwaukee and Saint Paul, (Hastings and Dakota Divisions,) Minnesota.
3. Little Rock and Fort Smith, Arkansas.
4. Memphis and Little Rock, Arkansas.
5. Michigan Central, (Saginaw and Mackinaw Divisions,) Michigan.
6. Missouri, Kansas and Texas, Kansas.
7. Oregon and California, Oregon.
8. Southern Minnesota.
9. Saint Louis, Iron Mountain and Southern, Missouri and Arkansas.—*June* 4, 1879, Vol. 41, pp. 458–462. (U.)

1160. Where by its bill of lading a railroad company designates a certain portion of the property delivered to it for transportation as "stores" and a certain other portion as "baggage," and agrees to transport the whole at tariff rates, the accounting officers cannot ignore the distinction recognized in the bill of lading between baggage and stores, without altering the terms of the express agreement. Although it may be necessary to look beyond the bill of lading to ascertain what are the tariff rates for baggage and for stores, yet when these rates are ascertained the bill of lading determines definitely what charges can be allowed for each. The railroad company cannot be

allowed baggage rates for the stores because it carried them on a passenger train.— *December* 24, 1879, Vol. 42, pp. 215–216. (U.)

1161. In a written contract for wagon transportation, three distinct rates of pay were stipulated, founded on the rates of speed or expedition, as follows: 1. Express company rates, *i. e.*, rates not to exceed those charged by express companies for like services; 2. Horse or mule rates, eighty cents per one hundred pounds; 3. Ox-team rates, sixty-five cents per one hundred pounds. The contract further provided that transportation by means of ox-teams was contemplated by the agreement, but that the faster means should be furnished when in the judgment of the chief quartermaster they should be required. The contractor was properly authorized to transport a certain quantity of stores at the rate of eighty cents per one hundred pounds, time and place of delivery being specified. He delivered the stores in good order, in one day less than the specified time, but in fact did the transportation by ox-teams: *Held*, that he was nevertheless entitled to be paid horse or mule team rates.— *November* 29, 1882, Vol. 46, pp. 474–477. (U.)

TRANSPORTATION RATES.

See Accounting Officers, 8; Contracts, 343; Railroads, 1047, 1049 1053, 1056, 1058–1059, 1062, 1066, 1068.

TRAVELLING EXPENSES.

SEE, ALSO, APPROPRIATIONS, 41; FUEL AND QUARTERS, 516; INDIAN AFFAIRS, 566, 584, 592–593; INDIAN AGENTS, 600, 617; MILEAGE, 686–687, 701; PENSIONS, 986; TIME, 1138, 1143; TRAVEL PAY, 821–827, 863–872, 896–898.

1162. The regulations providing for the actual travelling expenses of an officer contemplate simply such actual expenses as are incident to his progress from one portion of the country to another, and do not include his usual and ordinary expenses of board and lodging which attach to him always and under all circumstances.—*January* 18, 1869, Vol. 32, p. 36. (B.)

1163. Only the days actually employed in travelling are to be counted in determining the amount to be paid to citizen witnesses for travel pay. If a witness consumes more than a day in travelling fifty miles, or a day in travelling less than fifty miles, he is not entitled to be paid for more than a day in the first case, and should be paid nothing in the second case except actual travelling expenses.—*October* 5, 1869, Vol. 32, p. 468. (B.)

1164. Where board bills are allowed as a part of the necessary expenses attending the transportation of an officer under orders for duty, they constitute a proper charge against the Quartermaster's Department.*—*October* 20, 1869, Vol. 32, p. 482. (B.)

1165 Travel pay never having been considered an emolument, but simply a reimbursement of expenses, no settled account will be reopened for the purpose of making an additional allowance, except upon proof that the sum paid by claimant for necessary expenses

* This is under the earlier law, which provided for payment of mileage, &c., by the Quartermaster's Department.

was more than the amount allowed for the travel.—*November* 11, 1869, Vol. 32, pp 515–518 (B); *March* 3, 1876, Vol. 37, pp. 505–507. (C.)

1166. Officers in charge of United States troops or drafts of men, or composing a part of a military force that is being transported from one place to another, are not entitled to be reimbursed their expenses for special sleeping accommodations.—*May* 27, 1870, Vol. 33, pp. 143–144. (B.)

1167. The benefits of the act of July 15, 1870, (16 Stat., 320,) which fixes the rate of allowances to officers travelling under military authority, extends to the case of an officer travelling under orders to his own trial, regardless of his ultimate conviction or acquittal.*—*October* 14, 1873, Vol. 35, pp. 469–472. (B.)

1168. Under the act of June 16, 1874, (18 Stat., 72,) only the amount actually paid can be allowed as travelling expenses to a person holding employment or appointment under the Government.—*October* 27, 1874, Vol. 36, pp. 265–266. (B.)

1169. Where the contract with an acting assistant surgeon, United States Army, [executed prior to the approval of the Army appropriation act of June 16, 1874, (18 Stat., 72,)] provided that at the expiration thereof the officer should receive "mileage to Washington, D. C., the place of making the original contract:" *Held*, that within the meaning of said act, the surgeon's "actual expenses" were those provided for by the terms of the contract, and were payable under said act.—*November* 24, 1874, Vol. 36, pp. 323–324. (B.)

1170. Lieutenant L., being on his way east, on leave of absence, in July, 1874, purchased his transporta-

*Overruling section 2082 of Digest of 1869.

tion from Cheyenne to Omaha over the Union Pacific Railroad, being then unaware of the publication of Special Order, No. 158, directing him to report to the examining board to be convened in New York City on October 1, 1874: *Held*, that as he incurred this expense under his leave of absence, the order subsequently received could not be made available to cover his journey and support a claim for reimbursement of his travelling expenses.—*April* 15, 1875, Vol. 36, pp 550–551. (B.)

1171. The act of February 10, 1875, for the relief of persons suffering from the ravages of grasshoppers, (18 Stat., 314,) is a sufficient legislative sanction of the action of the Executive taken prior to its passage, to justify the payment, from the appropriation made by said act, of travelling and other necessary expenses incurred before its passage.—*April* 21, 1875, Vol. 36, p. 558. (B.)

1172. The allowance of ten cents mileage to an officer travelling under orders is limited to the United States; for travel in foreign parts, his actual expenses only are allowed. See acts of June 30, 1834, (4 Stat., 713, section 5,) and March 3, 1835, section 2, (4 Stat., 757;) Army Regulations, paragraph 999 of edition of 1857; section 2226 of Digest of 1869.—*March* 3, 1876, Vol. 37, pp. 505–508. (C.) But see decision of United States Supreme Court in United States *v.* Temple, 15 Otto, 97.

1173. Under the act of June 16, 1874, (18 Stat., 72,) cadets, upon being discharged from West Point, are entitled only to "actual expenses" for travelling to their homes, and not to the mileage specified in paragraph 347 of the Regulations of the United States Military Academy.—*February* 25, 1876, Vol. 37, p. 481. (C.)

1174. The per diem allowance of four dollars for hotel expenses while travelling, authorized by paragraph 1 of section 5 of General Orders No. 97, Adjutant-General's Office, of 1876, can be justified only on the theory that four dollars per day is practically the actual expense incurred.—*November* 20, 1877, and *January* 29, 1878, Vol. 39, pp. 471-472, 606-608; *January* 27, 1882, Vol. 45, p. 165. (U.)

1175. An estimate made on the basis of four dollars per day will not be accepted as a true one in any case in which it affirmatively appears that the "actual expense" was a less sum.—*January* 29, 1878, Vol. 39, p. 607; *January* 20, 1881, Vol. 43, p. 519. (U.)

1176. By Special Orders No. 6, district of Montana, March 22, 1876, an officer was ordered to remain at Helena, Mont., during his temporary disability, and to rejoin his command so soon as able to travel: *Held*, that such order did not entitle him to reimbursement for hotel and other expenses incurred by him during his stay at Helena.—*April* 27, 1878, Vol 40, pp. 156-157. (U.)

1177. A paymaster, who, between July 10, 1874, and May 20, 1875, was engaged in payment of troops in Arizona, and who, while moving from post to post, was accompanied by the usual guard of enlisted men to take care of camp and to guard animals, was not travelling without troops, escort, or supplies within the meaning of General Orders No. 69, Adjutant-General's Office, of 1874, and, therefore, was not entitled to reimburse himself for his travelling expenses. —*December* 18, 1878, Vol. 40, pp. 696-697. (U.)

1178. To entitle a disbursing officer of the Indian Bureau to a credit for travelling expenses incurred by him, he must file duly authenticated copies of the

orders of the Secretary of the Interior for the journeys taken.—*July* 17, 1880, Vol. 43, p. 78; *February* 25, *March* 9 and 28, and *May* 23, 1882, Vol. 45, pp. 264–266, 309, 382–383, 570. (U.)

1179. Travelling expenses incurred by a person employed in the Indian service in going to and from his home, after leave of absence obtained, is not allowable. Such an one cannot be said to be travelling on duty or public business.—*March* 17, 1881, Vol. 43, pp. 646–647; *March* 24, 1882, Vol. 45, p. 360. (U.)

1180. Where the journey for which payment of travelling expenses was claimed was undertaken without an order of the Interior Department, and was not on public business but was solely for the personal welfare of the retiring Indian agent, from which the Government received no benefit, the claim was disallowed.—*May* 7, 1881, Vol. 44, pp. 75–76. (U.)

1181. A paymaster's clerk, travelling on duty, cannot pay fare over the Atchison, Topeka and Santa Fé Railroad and be reimbursed therefor. Such payment and reimbursement is in conflict with the act of February 24, 1881. (See General Orders 97 of 1876, and 27 of 1881.)—*March* 6, 1881, Vol. 45, p. 302. (U.)

1182. By the act of March 3, 1875, (18 Stat., 452,) a paymaster's clerk is entitled to his actual travelling expenses. General Orders No. 97 of 1876 decided, as a matter of fact, that from the date of the order the actual travelling expenses of a clerk were four dollars per day. A modification of this order was made June 4, 1878, by General Orders No. 32, which decided that from that date the actual expenses of a paymaster's clerk were two dollars and fifty cents

per day. This last-mentioned order was not received by a paymaster at San Francisco, Cal., until July 30, 1878; and on the day preceding, to wit, on July 29, 1878, he had made a payment of travelling expenses to a clerk at the rate of four dollars per day. After receipt of the order, no effort was made by either paymaster or clerk to produce a bill of items or proof of actual expenditure: *Held*, that such a payment of travelling expenses, at the rate of four dollars per day, during a period when no order to that effect existed, was unauthorized, and that even if the travel had been performed and the expenses paid immediately after the issuing of General Orders No. 32, it would have been necessary to produce a bill of items and proof of the actual expenses in order to justify a payment in excess of two and a half dollars per day.—*February* 10, 1883, Vol. 47, pp. 1–4. (U.)

1183. By virtue of the act of March 3, 1875, (18 Stat., 452,) a paymaster's clerk is entitled to his actual travelling expenses. Said act is construed to allow the amount actually expended, even though a limit prescribed by the War Department in General Orders, such as a per diem allowance, has been exceeded, *provided* it be made clearly to appear that the limit has been exceeded necessarily and without fault.—*January* 27, 1882, Vol. 45, pp. 163–166; *February* 10, 1883, Vol. 47, pp. 1–4. (U.)

1184. An order such as the following: "You are hereby detached from the Ticonderoga, with permission to return to the United States," does not carry travelling expenses or mileage; nor will an order of the Secretary of the Navy, issued after the performance of the travel, give it that effect.—*April* 27, 1883, Vol. 47, pp. 230–231. (U.)

1185. An acting assistant surgeon (contract physician) travelled under orders, prior to November 17, 1880. (See paragraph 2283, Army Regulations of 1881, and opinion of Attorney-General Brewster in the case of Dr. John W. Bayne.) *Held*, that he was not entitled to mileage, but only to his actual travelling expenses as provided by the act of March 3, 1875, (18 Stat, 452,) and paragraph 1305 of Army Regulations of 1863.—*April* 13, 1883, Vol. 47, pp. 181–182. (U.)

1186. Cadets who enter the Naval Academy are not entitled to travelling expenses from their homes to the Academy —*February* 1, 1883, Vol. 46, pp. 661–662. (U.)

1186½. By the act of March 3, 1883, (22 Stat., 473,) Congress made an appropriation "for actual and necessary travelling expenses of naval cadets while proceeding from their homes to the Naval Academy for examination and appointment as cadets": *Held*, that this appropriation was available from and after the date of the act, and warranted the allowance of travelling expenses to the successful candidates for appointment at the Naval Academy for the year 1883, although the travel, in some instances, may have been performed prior to July 1, 1883.—*September* 8, 1883, Vol. 47, pp. 662–663. (U.)

1187. Prior to the decision of the Supreme Court in the case of the United States *v.* Temple, (15 Otto, 97,) not only travelling expenses, but also necessary and extraordinary expenses incident to the performance of special duty, under orders, were treated as based upon Navy Regulations and upon special orders of the Navy Department; but since that decision a right to reinbursement for travelling expenses or mere

personal expenses of naval officers is not affected by Regulation or Department orders purporting to fix the amount. Yet, although the Secretary of the Navy has not now jurisdiction to determine in advance an amount to be allowed as expenses while travelling or to increase the salary or emolument of an officer, he is authorized to order and direct the incurring of extraordinary expenses in procuring needed information for the Department; and, if money is expended in the interest of the Government in making the examination and obtaining the information specified in the order, and not as an emolument to the officer, it is within the discretion of the Secretary to require the services to be rendered and the expense to be incurred.—*February* 27, 1884, Vol. 48, pp. 433–436. See, also, Vol. 50, pp. 35–36, *November* 22, 1884. (U.)

TREASURY CERTIFICATES.

See Accounts, 12; Assignments, 62; Claims, 275, 278; Department Practice, 404, 406–408; Endorsement, 456; Time, 1139.

TREASURY SETTLEMENTS.

See Accounting Officers, 4.

TREASURY WARRANTS.

See Comptroller, 302, 305; Department Practice, 403, 409 and note.

VESSELS.

See Jurisdiction, 633; Prisoners of War, 1035; Set-off, 1103; Transportation, 1147.

VESSELS LOST OR DESTROYED.

See, also, Charter-Party, 236, 244; Construction of Statutes, 308; Impressment, 558–559.

1188. The loss of a vessel in direct consequence of being overloaded by a Government officer, the overloading being due to the exigencies of the military service, is a loss by "unavoidable accident" within the meaning of the act of March 3, 1849, (section 3483, Rev. Stat.)—*February* 16, 1871, Vol. 33, pp. 491–492. (B.)

1189. The steamer D. G. Taylor, while at Louisville, Kentucky, February 1, 1864, en route to Cincinnati, with a cargo of merchandise for consignees at the latter place, was impressed into the United States military service. On the morning of February 5, she took fire and was completely destroyed. The origin of the fire could not be ascertained, though it was supposed to be the work of rebel incendiaries; there was a competent watch on board at the time and

no fault or negligence was attributable to the owners: *Held*, that the loss was from "unavoidable accident," and that the United States was liable, under the act of March 3, 1849, (section 3483, Rev. Stat.,) for the value of the steamer.—*March* 4, 1871, Vol. 33, pp. 509–510. (B.)

1190. The brig East sailed from the port of New York February 20, 1862, bound for Fort Pickens, Florida, with a cargo of United States military stores. The contract under which she sailed was the ordinary bill of lading. Eight days were allowed for discharge of cargo, and demurrage thereafter was to be paid at the rate of thirty-seven dollars and twelve cents per diem. The brig arrived and reported off the fort March 19, 1862, and by April 3 the greater portion of her cargo had been removed. At the last named date the steamer Philadelphia arrived off the fort; whereupon the chief quartermaster at that post suspended the unloading of the brig and proceeded to land the cargo of the steamer. On April 5 the weather became too stormy to admit of the landing of stores on the beach; and as the demurrage on the steamer was very heavy, the brig was ordered to anchor near her in order that the stores remaining upon the steamer might be transferred to the brig. No express contract or agreement was made in relation to such use of the brig. On April 6, shortly after the remainder of the steamer's stores had been discharged into the brig, a severe storm arose which lasted for several days, and during the night of April 8 the brig parted her cables and was driven ashore and lost: *Held*, that the brig was employed as a transport in the United States military service at the time of her loss, and not as a common carrier; that the contract was in force when

the deviation from the terms thereof took place, and that the deviation was for the benefit of the Government and not of the owners of the brig; hence, that the United States was responsible for her loss, and liable, under the act of March, 3, 1849, (section 3483, Rev. Stat.,) to her owners for her value.—*December* 27, 1870, Vol. 33, pp. 406–418. See also the cases of the schooner S. B. Bailey and the steamer Pine Hill, *Ibid.*, pp. 445–453, 629–631, *January* 14, and *May* 10, 1871. (B.)

1191. The steamer B. M. Runyan, while in the United States military service by impressment, was lost on the Mississippi River, in July, 1864, by "unavoidable accident." At the date of her impressment there was an insurance upon her of seventeen thousand dollars. Her owners filed a claim against the United States for her value. Before presenting their claim they effected a settlement with the insurance companies, under advice that the latter had been released from their liability; the amount of the premiums for the unexpired portion of the time covered by the policies of insurance was returned to them by the underwriters, and the forfeited policies were canceled. In February, 1867, a portion of their claim was allowed by the accounting officers and was paid, to wit, the difference between the value of the steamer and the amount of the insurance. The owners claim that the deduction of the insurance was erroneous, and that they were entitled to be paid the further sum of seventeen thousand dollars. The evidence establishing the fact that the Government had taken the steamer, after her impressment, into waters which she was not at liberty, under her policies of insurance, to navigate, and had retained on board and in charge of her a

pilot who was not licensed to act as such in the waters into which she was taken: *Held*, that the underwriters had been thereby released from their liability; that the settlement with the insurance companies was neither illegal nor contrary to public policy, nor unwarranted by the practice in marine insurance, and that it did not estop the owners of the steamer from presenting their claim against the Government for the amount of the insurance; that they were, therefore, entitled to a further allowance of seventeen thousand dollars, less the amount of the premiums returned by the insurance companies.—*June* 12, 1871, Vol. 34, pp. 32–39. (B.)

1192. The steamer George M. Bird, built at, and owned by loyal citizens of, New Bedford, Mass., was, at the outbreak of the rebellion, in Southern waters, and, in May, 1861, was taken possession of by the rebels. In October, 1862, the United States military and naval forces recaptured her, and thenceforward, until July 10, 1863, she was used in the military service of the United States. At the last-named date she was destroyed by order of the military authorities, to prevent her from again falling into the hands of the enemy: *Held*, that the doctrine of *postliminium* was applicable to her case; that upon her recapture from the rebels in 1862, it was the duty of the Government to re-establish her owners in all their rights with respect to her; that the retention of possession, and the use of the steamer by the United States was under and by virtue of an implied contract, and that the Government was accordingly liable to her owners, under the act of March 3, 1849, (section 3483, Rev. Stat.,) for her value.—*March* 9, 1872, Vol. 34, pp. 377–383 (B.); Digest of Opinions

of Judge-Advocate-General, p. 312; Vattel's Law of Nations, pp. 385–393; 1 Kent's Com., 101; Wheaton's International Law, p. 653; Act of Congress of March 3, 1800, (2 Stat., 16,); 10 Opinions, 25; Smith's Com., 620; Story on Contracts, sec., 11; Metcalf on Contracts, p. 4; 2 Blackstone, 443; Ogden *v.* Saunders, 12 Wheaton, 341.

1193. A vessel in charge of her owners as a common carrier, though freighted in part or in whole by the Government, is not in the service of the United States within the meaning of the act of March 3, 1849, (9 Stat., 415, section 3483, Rev. Stat.)—*April* 28, 1881, Vol. 44, pp. 49–52. (U.)

1194. Where a common carrier was compelled against his will and by military force to take troops and munitions of war on board his vessel, but the vessel proceeded in its usual course of business, and the transaction was such that the owner, in case the voyage had proved successful, would have been entitled to compensation as a common carrier: *Held*, that the vessel was in the service of its owners, and not in the service of the United States within the meaning of the act of March 3, 1849.—*June* 21, 1884, Vol. 49. pp. 113–120. (U.)

VESSELS, REPAIRS TO, WHILE UNDER CHARTER TO THE GOVERNMENT.

See Charter Party, 243; Per Diem, 1019–1020.

VOUCHERS.

SEE, ALSO, ACCOUNTS, 12; CLAIMS, 265, 280; CONTRACTS, 359; DISBURSING OFFICERS, 424; ERASURES, 457; EVIDENCE, 474; FUEL AND QUARTERS, 541; INDIAN AFFAIRS, 579, 586; INDIAN AGENTS, 597, 617.

1195. The purchaser and holder of a voucher receipted in blank by the payee therein named, can acquire no greater or higher right than the original assignor had at the date of transfer, and such purchaser takes subject to all existing rights and equities. If payment be made by the Government upon such voucher, and it is afterwards discovered to have been previously paid, or prove to have been fraudulent or invalid, the assignee will be held to have had actual or constructive notice of the previous payment or of the invalidity of the voucher, and to be liable to refund to the Government the amount wrongfully collected.—*October* 16, 1878, Vol. 40, pp. 573–576. (U.)

1196. It is a well-established rule of this office that where a certifying officer has a return on file covering a period that embraces the date of a voucher issued by him, and his return disavows, or even makes no mention of the purchase alleged in the voucher, the record must be regarded as in conflict with, and, therefore, fatal to the claim; but that, in the absence of any cotemporaneous return, the voucher will be allowed full weight as evidence.—*October* 2, 1883, Vol. 48, pp. 8–11. (U.)

1197. On occasions of emergency and in the absence of an officer of the Quartermaster's Department, the quartermaster or acting quartermaster of a regiment, company, or detachment may, by direction, or with the approval, of his commanding officer, make necessary purchases and give binding vouchers there-

for; and the approval of such commanding officer, indorsed upon the voucher given, will be accepted as *prima facie* evidence of the existence of such an emergency.—*October* 2, 1883, Vol. 48, pp. 10–11. (U)

1198. Prior to the decision of the United States Supreme Court in Spofford *v.* Kirk, (7 Otto, 484,) it was the practice of the accounting officers to recognize assignees in all undisputed claims arising upon contract for the direct payment of money. Soon after the rendition of that decision the general practice, in that respect, was changed. (See Vol. 45, pp. 547–559.) But, in making that change, an exception was made, based upon public policy, in favor of assignees and holders of vouchers for quartermaster's stores and commissary supplies for which vouchers were issued during the war of the rebellion; and it is still the practice of the accounting officers, in auditing accounts of that class, to recognize the *bona fide* holders and owners of such vouchers as assignees, and as entitled to payment.—*December* 31, 1883, Vol. 48, pp. 256–257. (U.)

1199. The act of a disbursing officer in issuing a voucher after the services therein mentioned have been performed, cannot be regarded as a final decision in the matter. Such officer has no power to make a conclusive decision. The most that can be said of the effect of such a voucher is that it is treated as *prima facie* evidence of the amount due. Such vouchers have, as a general rule, been accepted as proof of the facts stated on their face; and, in the hands of third parties, they have been generally recognized and treated as if they were negotiable paper. As a matter of law, however, such vouchers were always open to question in regard to the amount actually due; and

any officer authorized to make payment on a claim evidenced by such vouchers is not only authorized to look beyond the voucher, to ascertain what amount was due, but, in all cases, he pays at the risk that it may afterwards appear, on settlement of his accounts, that the amount shown by the face of the voucher was not actually due.—*January* 3, 1884, Vol. 48, pp. 260–261. (U.)

1200. The decision of the Comptroller in the claim of James McGrady, (No. 21,619, Settlement No. 500 of 1883,) to the effect that unless the original certificate, voucher, check, or other evidence of debt, upon which a claim is founded, is produced, or its absolute destruction clearly proved, the claim cannot be allowed, does not apply to a simple memorandum receipt. Such a receipt is no evidence of debt whatever; is not assignable or in any way transferable; no person whatever could pay it on behalf of the Government or on his own behalf, so as to create any obligation or make it any "evidence of debt" against the Government. Hence its loss is of little importance and its absolute destruction need not be proved.—Claim of William Matthews, March 26, 1884, Vol. 48, pp. 523–526. (U.)

1201. Purchase vouchers must be accompanied by evidence of the delivery of the goods to an officer or person entitled to receive them.—*September* 7, 1878, Vol. 40, p. 473; *August* 10, 1879, Vol. 41, pp. 309, 638; *March* 30, 1880, Vol. 42, pp. 498, 543; *June* 7, 1882, Reconcilement Book No. 8, Navy Division, p. 417; *June* 22, 1882, Vol. 45, pp. 664, 684. (U.)

1202. Purchase and transportation vouchers should contain the receipt of the officer who is chargeable with the custody or distribution of the public prop-

erty.—*February* 26, 1875, Vol. 36, p. 468½ (B.); *November* 3, 1876, Vol. 38, p. 365 (C.); *March* 20, 1878, Vol. 40, p. 72; *May* 18, 1878, *Ibid.*, pp. 203, 258, 340, 373, 388; *February* 17, 1879, Vol. 41, pp. 141, 248, 313–314, 320, 375, 457, 491, 535; *July* 11, 1881, Difference Book, Quartermaster's Division, Vol. 26, pp. 6–7, 123, 163; *May* 23 and 29, 1883, Letter-press Book, Navy Division, pp. 276, 280; *December* 17, 1884, *Ibid.*, p. 424. (U.)

WAIVER.

See Bounty, 135; Charter-Party, 242; Claims, 280; Courts-Martial, 376.

WAGES.

See Time, 1144–1145.

WAR CLAIMS.

See Appropriations, 35; Assignments, 63; Evidence, 474.

WARRANTS.

See Treasury Warrants.

WHARFAGE.

1203. Goods shipped by the United States, in the ordinary course of transportation, are subject, in the absence of special provisions to the contrary, to the same wharfage and tolls (prescribed in pursuance of the statutes of California) as if such goods were private property; and if a railroad company, as a carrier, transports goods at the request of the United States, and thus becomes primarily liable for such tolls and wharfage, it may lawfully claim to be reimbursed therefor as for necessary expenses incidental to the transportation, and tolls can be justly demanded on account of United States stores taken to and from a steamer while lying at a wharf for the use of which a monthly rent is paid, unless, by special agreement, the monthly rent is to stand in lieu of, or be a commutation of such tolls.—*December* 5, 1877, Vol. 39, pp. 495–496. (U.)

WIDOWS—WIVES.

SEE, ALSO, ACCOUNTING OFFICERS, 9; CLAIMS, 276, 286; COLORED SOLDIERS, 294; EXECUTORS AND ADMINISTRATORS, 485, 488; JURISDICTION, 657.

1204. Where, in Texas, the wife of a soldier, under the impression that her marriage with him was invalid, (although, in fact, the same was valid at common law and under the ruling of the United States Supreme Court in 6 Otto, 76,) married again during the soldier's life: *Held* that she should be recognized, upon the death of the soldier, as his widow; and that,

as such, she was entitled to his arrears of pay, it not appearing that she and the soldier were ever divorced, and adultery, under the laws of Texas, not working, *per se*, any forfeiture of the guilty party's estate.—*October* 7, 1880, Vol. 43, pp. 276–278. (U.)

WILLS.

1205. The provision in article 13, p. 114, of Navy Regulations of August 7, 1876, that "a nuncupative will must be reduced to writing immediately, and attested by at least two officers," imposes a duty upon officers of the Navy to so attest such wills when it is in their power, but it does not render a will void that is duly witnessed by persons other than officers.*—*February* 12, 1880, Vol. 42, p. 354. (U.)

WITNESSES.

1206. A citizen witness, summoned before a general court-martial, who refuses to obey the summons and is compulsorily brought before the court by the military guard, is entitled to witness fees and travel-

*Paymasters must make immediate and separate returns to the Fourth Auditor's office of the accounts of deceased officers, seamen, or marines, and must transmit their wills, if they shall have left any. The balances which may have been due to said deceased at the time of their death, will be paid only after a statement of their accounts by the accounting officers. Revised Rules, 1864.

ling allowances, the same as witnesses who obey the summons voluntarily.—*April* 1, 1869, Vol. 32, p. 147. (B.)

1207. A clerk in the civil service of the United States is not entitled to a per diem for attendance as a witness before a United States Court of Inquiry. The allowance is forbidden by the acts of August 23 and 26, 1842, (5 Stat., 510, 525,) and February 26, 1853, (10 Stat., 167, section 850 Rev. Stat.)—*May* 9, 1870, Vol. 33, p. 120. (B.)

1208. A collector of internal revenue is not entitled to a per diem allowance while a witness before a court-martial; he is within the restrictions of the act of February 26, 1853, (10 Stat., 167,) and section 2263 of the Digest of 1869.—*December* 8, 1870, Vol. 33, pp. 378–379. (B.)

1209. Contract surgeons, when ordered as witnesses before a court-martial, are entitled to mileage to the place of meeting of the court and back to their respective posts.*—*April* 15, 1873, Vol. 35, pp. 279–281. (B.)

1210. Government employees, when summoned as witnesses before a court-martial, will be allowed, in addition to their actual travel fare to and from the court, their necessary expenses of board, not exceeding two dollars and fifty cents per day, while going to, and returning from, and in attendance upon the court.—*April* 15, 1873, Vol. 35, p. 281. (B.)

1211. A retired naval officer is not entitled to increase of pay while attending as a witness before a civil or naval court.—*March* 5, 1874, Vol. 35, p. 649. (B.)

* Overruling section 2274 of Digest of 1869.

WRECKS.

1212. As to the disposition to be made of property saved from wreck and brought into a consular jurisdiction, and as to the duties of consular officers in relation thereto, see Vol. 38, pp. 583–585, *February* 20, 1877. (C.)

APPENDICES.

Appendix A.

The following sections of the first volume of the Digest, commonly known as the Digest of 1869, have been overruled:

Section.		
234.	See *ante*, section	189
333.	See *ante*, sections	194, 199
586.	See *ante*, section	352
620.	See *ante*, section	812
689.	See *ante*, section	189
721.	See *ante*, section	178
1128.	See *ante*, section	811
1129.	See *ante*, section	812
1220.	See *ante*, section	788
1245. 1246.	See *ante*, section	776
1312.	See *ante*, section	812
1973.	See *ante*, section	1144
2082.	See *ante*, sections	692, 898, 1167
2138.	See *ante*, section	690
2274.	See *ante*, section	1209
	Also, subdivision 11 of section 534. See *ante*, section	1144

And the following have been modified:

Section.		
1304.	See *ante*, section	812
1783.	See *ante*, section	537
1876.	See *ante*, section	797
2189.	See *ante*, section	864

Appendix B.

JURISDICTION OF THE SECOND COMPTROLLER.

The office of Second Comptroller was created by the act of March 3, 1817, (3 Stat., 366,) which conferred upon the Comptroller final jurisdiction in the settlement of all accounts accruing in the War and Navy Departments; Indian Affairs being at that time administered in the War Department, and matters relating to pensions in the Departments of War and the Navy.

The jurisdiction of the Second Comptroller embraces the same subjects as at the creation of the office, and his decisions as to what balances are due to or from the Government on account of expenses incurred in these branches of the service are conclusive, and are not subject to be changed by any officer of the executive branch of the Government.

The jurisdiction is now defined by the following provisions of the Revised Statutes:

Sec. 277. The duties of the Auditors shall be as follows:

* * * * * * *

Second. The Second Auditor shall receive and examine all accounts relating to the pay and clothing of the Army, the subsistence of officers, bounties, and premiums, military and hospital stores, and the contingent expenses of the War Department, all accounts relating to Indian affairs, and to agents of lead and other mines of the United States; and, after examination of such accounts, he shall certify the balances, and transmit such accounts, with the vouchers and certificate, to the Second Comptroller for his decision thereon.

Third. The Third Auditor shall receive and examine all accounts relative to the subsistence of the Army, the Quartermaster's Department, and generally all accounts of the War Department other than those provided for; all accounts relating to pensions for the Army, and all accounts for compensation for the loss of horses and equipments of officers and enlisted men in the military service of the United States, and for the loss of horses and equipments, or of steamboats, and all other means of transportation, in the service of the United States by contract or impressment; and, after the examination of such accounts, he shall certify the balances and shall transmit such accounts, with all the vouchers and

papers and the certificate, to the Second Comptroller for his decision thereon.

Fourth. The President may assign to either the Second or the Third Auditor the settlement of the accounts in the War Department existing at the conclusion of the war of eighteen hundred and twelve.

Fifth. The Fourth Auditor shall receive and examine all accounts accruing in the Navy Department or relative thereto, and all accounts relating to Navy pensions; and, after examination of such accounts, he shall certify the balances, and shall transmit such accounts, with the vouchers and certificate, to the Second Comptroller for his decision thereon.

Sec. 273. It shall be the duty of the Second Comptroller:

First. To examine all accounts settled by the Second, Third, and Fourth Auditors, and certify the balances arising thereon to the Secretary of the Department in which the expenditure has been incurred.

Second. To countersign all warrants drawn by the Secretaries of War and of the Navy, which shall be warranted by law. (See, also, sec. 3673.)

Third. To report to the Secretaries of War and of the Navy the official forms to be issued in the different offices for disbursing the public money in those Departments, and the manner and form of keeping and stating the accounts of the persons employed therein.

Fourth. To superintend the preservation of the public accounts subject to his revision.

Sec. 274. The Second Comptroller may prescribe rules to govern the payment of arrears of pay due to any petty officer, seaman, or other person not an officer, on board any vessel in the employ of the United States, which has been sunk or destroyed, in case of the death of such petty officer, seaman, or person, to the person designated by law to receive the same.

Sec. 191. The balances which may from time to time be stated by the Auditor and certified to the heads of Departments by the Commissioner of Customs, or the Comptrollers of the Treasury, upon the settlement of public accounts, shall not be subject to be changed or modified by the heads of Departments, but shall be conclusive upon the executive branch of the Government, and be subject to revision only by Congress or the proper courts. The head of the proper Department, before signing a warrant for any balance certified to him by a Comptroller, may, however, submit to such Comptroller any facts in his judgment affecting the correctness of such balance, but the decision of the Comptroller thereon shall be final and conclusive, as hereinbefore provided.

The following sections of the Revised Statutes are also pertinent to this subject:

Sec. 305. The Treasurer shall receive and keep the moneys

of the United States, and disburse the same upon warrants drawn by the Secretary of the Treasury, countersigned by either Comptroller, and recorded by the Register, and not otherwise. * * * * *

Sec. 300. (A.) All claims of loyal citizens in States not in rebellion, for quartermaster's stores actually furnished to the Army of the United States, and receipted for by the proper officer receiving the same, or which may have been taken by such officers without giving such receipt, may be submitted to the Quartermaster-General of the United States, accompanied with such proofs as each claimant can present of the facts in his case; and it shall be the duty of the Quartermaster-General to cause such claim to be examined, and if convinced that it is just, and of the loyalty of the claimant, and that the stores have been actually received or taken for the use of, and used by the Army, then to report each case to the Third Auditor of the Treasury, with a recommendation for settlement.

Sec. 300. (B.) All claims of loyal citizens in States not in rebellion, for subsistence actually furnished to the Army and receipted for by the proper officer receiving the same, or which may have been taken by such officers without giving such receipt, may be submitted to the Commissary-General of Subsistence, accompanied by such proof as each claimant may have to offer; and it shall be the duty of the Commissary-General of Subsistence to cause each claim to be examined, and if convinced that it is just, and of the loyalty of the claimant, and that the stores have actually been received, or taken for the use of, and used by the Army, then to report each case for payment to the Third Auditor of the Treasury with a recommendation for settlement.

The provisions of the above two sections shall extend to the State of Tennessee, and to the counties of Berkeley and Jefferson, in the State of West Virginia. But the provisions of the above two sections shall not authorize the payment of claims for the occupation of, or injury to, real estate in any State declared in insurrection during the rebellion.

Sec. 3633. Whenever any officer employed in the civil, military, or naval service of the Government, to disburse the public money appropriated for those branches of the public service, respectively, fails to render his accounts, or to pay over, in the manner and in the times required by law, or by the regulations of the Department to which he is accountable, any sum of money remaining in his hands, it shall be the duty of the First or Second Comptroller of the Treasury, as the case may be, who shall be charged with the revision of the accounts of such officer, to cause to be stated and certified the account of such delinquent officer to the Solicitor of the Treasury, who is hereby authorized and required imme-

diately to proceed against such delinquent officer, in the manner directed in the six preceding sections.

Sec. 3743. All contracts to be made, by virtue of any law, and requiring the advance of money, or in any manner connected with the settlement of public accounts, shall be deposited in the office of the First Comptroller of the Treasury of the United States, the Second Comptroller of the Treasury of the United States, or the Commissioner of Customs, respectively, according to the nature thereof, within ninety days after their respective dates.

APPENDIX C.

STATEMENT OF ACCOUNTS AND CLAIMS REVISED AND SETTLED IN THE OFFICE OF THE SECOND COMPTROLLER SINCE THE FISCAL YEAR ENDING JUNE 30, 1853, PRIOR TO WHICH TIME NO REPORTS THEREOF WERE PUBLISHED.

EXHIBIT I.

Showing the number of accounts of disbursing officers, agents, &c., received and examined, passed, and recorded.

Fiscal year—	Number reported by—			Total number.	Amount embraced.
	Second Auditor.	Third Auditor.	Fourth Auditor.		
1853–'54	1,199	2,550	315	4,064	Not reported.
1854–'55	1,280	3,212	316	4,808	Do.
1855–'56	1,093	3,326	451	4,870	Do.
1856–'57	1,398	3,205	433	5,036	$42,397,041 47
1857–'58	2,693	3,019	340	6,052	42,295,466 38
1858–'59	1,536	2,630	429	4,595	44,398,117 32
1859–'60	1,390	2,299	324	4,013	42,121,011 71
1860–'61	1,294	1,985	283	3,562	34,320,068 27
1861–'62	5,572	3,092	476	9,140	87,684,097 00
1862–'63	4,660	3,049	308	8,017	Not reported.
1863–'64	4,866	2,339	400	7,605	Do.
1864–'65	4,769	3,497	489	8,755	Do.
1865–'66	2,550	5,798	389	8,737	Do.
1866–'67	2,944	9,460	531	12,935	$1,370,170,775 00
1867–'68	3,225	6,626	403	10,254	1,273,667,607 00
1868–'69	3,114	4,736	367	8,217	807,684,225 62
1869–'70	3,023	3,555	474	7,052	572,642,671 00
1870–'71	4,066	3,829	684	8,579	431,846,120 00
1871–'72	4,450	2,810	443	7,703	370,945,123 40
1872–'73	3,779	2,594	561	6,934	257,096,661 64
1873–'74	4,030	7,229	611	11,870	183,873,769 07
1874–'75	4,588	8,384	1,337	14,259	159,121,666 00
1875–'76	3,801	1,869	710	6,380	102,813,971 00
1876–'77	4,655	2,118	369	7,142	103,459,283 00
1877–'78	4,895	2,368	349	7,612	94,327,975 00
1878–'79	5,107	2,020	415	7,542	76,280,015 00
1879–'80	4,834	1,943	330	7,107	81,192,363 00
1880–'81	3,680	1,720	394	5,794	110,430,708 00
1881–'82	3,740	1,698	530	5,968	103,086,806 00
1882–'83	2,375	1,901	887	5,163	91,593,941 00
1883–'84	1,612	2,298	529	4,439	93,996,778 00
Total	102,218	107,109	14,877	224,204	6,537,446,260 88

EXHIBIT II.

Showing the number of claims received, revised, and recorded.

[NOTE.—This Exhibit embraces what, prior to 1867, were designated "certificate accounts," also what, from 1863 to 1866, inclusive, were reported separately as prize-money accounts.]

Fiscal year—	Number reported by—			Number of referred cases.	Total number.	Amount involved.
	Second Auditor.	Third Auditor.	Fourth Auditor.			
1853–'54	846	None.	500	None.	1,346	Not reported.
1854–'55	569	...do ...	531	...do	1,100	Do.
1855–'56	583	...do	770	...do	1,353	Do.
1856–'57	488	...do	535	...do	1,023	Do.
1857–'58	499	...do	512	...do	1,011	Do.
1858–'59	455	...do	412	...do	867	Do.
1859–'60	584	...do	368	...do	952	Do.
1860–'61	334	...do	359	...do	693	Do.
1861–'62	3,019	...do	539	...do	3,558	Do.
1862–'63	34,093	...do	1,151	...do	35,244	Do.
1863–'64	89,816	...do	11,109	...do	100,925	Do.
1864–'65	95,577	...do	21,544	...do	117,121	Do.
1865–'66	81,915	...do	45,212	...do	127,127	Do.
1866–'67	63,640	...do	15,843	...do	79,483	$13,909,060 00
1867–'68	158,697	893	8,868	...do	168,458	27,892,698 00
1868–'69	62,002	1,994	5,063	2,048	71,107	8,447,909 76
1869–'70	35,197	1,167	6,783	1,993	45,140	6,753,940 00
1870–'71	19,434	546	3,496	1,794	25,270	6,075,076 00
1871–'72	8,205	2,558	3,643	2,740	17,146	3,824,053 59
1872–'73	13,622	5,618	2,122	3,172	24,534	6,495,551 51
1873–'74	9,555	1,257	2,858	4,706	18,376	3,360,967 71
1874–'75	7,632	2,336	4,614	4,470	19,102	3,598,618 00
1875–'76	3,647	2,665	5,270	4,325	15,907	2,915,365 00
1876–'77	4,252	2,931	1,933	490	9,606	4,474,290 00
1877–'78	3,988	2,940	3,872	3,064	13,864	8,251,902 00
1878–'79	3,765	5,989	1,312	2,311	13,377	6,991,542 00
1879–'80	4,520	3,030	1,532	2,494	11,876	3,934,850 00
1880–'81	4,716	3,020	1,410	2,995	12,141	4,045,846 00
1881–'82	5,720	4,117	1,328	3,566	14,731	3,676,268 00
1882–'83	12,074	6,410	1,662	2,239	22,385	7,719,179 00
1883–'84	13,254	5,574	1,466	2,489	22,783	8,605,158 00
Total	742,698	53,395	156,617	44,896	997,606	130,972,274 57

SUMMARY.

Total amount embraced in accounts passed, as shown by Exhibit I	$6,537,446,260 88
Total amount embraced in claims revised, as shown by Exhibit II	130,972,274 57
Estimated total embraced in accounts and claims in years for which amounts not reported	478,302,306 00
Grand total	7,146,720,841 45

APPENDIX D.

COMPTROLLERS, CHIEF CLERKS, AND DEPUTIES.

SECOND COMPTROLLERS.

Name.	Whence appointed.	Date of commission.	Expiration of service.
Richard Cutts	Massachusetts	Mar. 6, 1817	Mar. 21, 1829
Isaac Hill	New Hampshire	Mar. 21, 1829	May 24, 1830
James B. Thornton	New Hampshire	May 27, 1830	June 30, 1836
Albion K. Parris	Maine	June 18, 1836	Nov. 28, 1850
Hiland Hall	Vermont	Nov. 27, 1850	Sept. 10, 1851
E. J. Phelps	Vermont	Oct. 1, 1851	Feb. 13, 1853
J. M. Brodhead	New Hampshire	Feb. 11, 1853	Oct. 8, 1857
James M. Cutts	District of Columbia	Oct. 1, 1857	May 11, 1863
J. M. Brodhead	New Hampshire	May 29, 1863	Jan. 23, 1876
Cyrus C. Carpenter	Iowa	Jan. 7, 1876	Sept. 30, 1877
William W. Upton	Oregon	Oct. 1, 1877	.....

CHIEF CLERKS.

Enoch Reynolds	.....	Mar. 4, 1817	Oct. 14, 1833
J. N. Moulder	.....	Oct. 15, 1833	Jan. 7, 1839
Jonathan Seaver	.....	Jan. 8, 1839	Sept. 30, 1843
George D. Abbot	District of Columbia	Oct. 1, 1843	Nov. 30, 1844
John M. Brodhead	New Hampshire	Dec. 1, 1844	May 23, 1850
James M. Cutts	District of Columbia	May 24, 1850	Mar. 31, 1853
Tobias Purrington	Maine	April 1, 1853	Nov. 16, 1856
T. J. Cathcart	District of Columbia	Nov. 17, 1856	Nov. 26, 1860
J. H. Houston	District of Columbia	Dec. 3, 1860	May 11, 1863
G. Buckingham	Iowa	May 17, 1863	Sept. 30, 1866
J. W. Smith	Iowa	Oct. 1, 1866	May 30, 1869
E. B. Curtis	New York	June 1, 1869	June 30, 1875

DEPUTY SECOND COMPTROLLERS.*

E. B. Curtis	New York	July 1, 1875	Jan. 16, 1876
Reuben Williams	Indiana	Jan. 17, 1876	July 15, 1876
James S. Delano	Illinois	July 24, 1876	.....

*By the act of March 3, 1875, (18 Stat., 396, 398,) the office of Deputy Second Comptroller was created, and its incumbent was required to perform the duties theretofore prescribed by law and performed by the Chief Clerk.

APPENDIX E.

LIST OF OFFICERS AND EMPLOYEES IN THE SECOND COMPTROLLER'S OFFICE ON JANUARY 1, 1885.

Second Comptroller.

WILLIAM W. UPTON.

Deputy Second Comptroller.

JAMES S. DELANO.

Chiefs of Division.

WILLIAM W. GREEN.
JEROME LEE.
BENJAMIN S. PIKE.
JARED D. TERRILL.
ALFRED THOMAS.

Acting Chief of Division.

GEORGE H. FRENCH.

Clerks of the Fourth Class.

JOHN W. BABBITT.
ROGER BELLIS.
ARTHUR R. BURKHOLDER.
CHARLES L. CURTISS.
WILLIAM P. FREEMAN.
EDMUND F. FRENCH.
THOMAS JOHNSON.
ROBERT J. MITCHELL.
RUFUS N. TILTON.
JAMES E. UNDERHILL.
ANDREW J. WHITAKER.

Clerks of the Third Class.

LUCIUS D. ALDEN.
PETER A. AUER.
OSCAR BIELASKI.
JOHN H. BROUGH.
DEWITT C. BRODHEAD.
THOMAS C. CAREY.
EDWIN J. DOWLING.
CASTALIO HOSMER.
JOSIAH Q. KERN.
HENRY C. MARCH.
PHILIP H. MONTAGUE.
GEORGE REDWAY.
JOHN W. REID.
JACOB A. SHINDEL.
ALBERT B. WHITE.
JAMES W. WISNER.
MENZO WIXSON.

Clerks of the Second Class.

MASON CAMPBELL.
CHARLES M. DAUGHERTY.
LOUIS DUVAL.
J. AUGUSTUS FRANK.
WILLIAM R. GASS.
AUGUST HENKEL.
ROBERT HUTCHESON.
WILLIAM B. LE DUC.
HAROLD C. MEGREW.
PRESTON E. NORTHUP.
SAMUEL B. PARRIS.
THORNTON W. SARGENT.
WILLIAM A. SAXTON.
Mrs. ANN R. STORY.

Clerks of the First Class.

GEORGE H. GLOVER.
ROBERT H. HARTSHORN.
GEORGE H. HILL.
Miss SUSAN M. JACKSON.
JOHN A. LYNCH.
WILLIAM S. MARKS.
Miss LAURA G. MEEHAN.
HANCOCK NEAGLE.
JAMES J. NORRIS.
Mrs. ANNIE H. ROBERTS.
FRANCIS V. ROBINSON.
HENRY H. SWEARINGEN.
Miss CARRIE TOMPKINS.

Clerks at One Thousand Dollars.

Miss CLARA INGERSOLL.
Mrs. ELIZABETH H. MCCLERY.
Mrs. FREDERICKA B. WILSON.

Clerks at Nine Hundred Dollars.

Miss SALLIE G. ANDERSON.
Miss MARY E. BULGER.
Mrs. JOSEPHINE B. CUTLER.
Mrs. HELEN J. DURFEE.
Miss EMMA GUYTON.
Miss AGNES C. HOUSTON.
Mrs. MARY H. JOHNSTON.
Miss MAY E. MCCAWLEY.
Miss E. JENNIE STEVENS.

Messenger.

JACOB LYON.

Laborers.

JAMES H. JONES.
EDWARD ODOM.
JOHN SUTTON.

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